United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-1494

United States Court of Appeals

FOR THE SECOND CIRCUIT

B p/s

UNITED STATES OF AMERICA,

Appellee,

v.

ANTHONY M. NATELLI,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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PROCEEDINGS IN UNITED STATES v. NATELLI
No. 74 Cr. 43
RELEVANT DOCKET ENTRIES

Date	Proceedings
1/17/74	Filed indictment.
1/28/74	Anthony J. Natteli (Atty. John S. Martin) Defts, plead not guilty, Bail fixed at $50,000. P.R.B. Unsecured. Bail limits extended to Continental U.S. All defts, motions returnable in 20 days. All defts. ordered photographed and fingerprinted. Case assigned to Judge Tyler for all purposes. Brieant.J.
1/28/74	ANTHONY NATELLI-filed personal recognizance bond without security in the sum of $50,000.
1/29/74	A. NATELLI-filed notice of appearance by atty: Martin & Obermaier, 1 Rockefeller Plaza, NYC 10020 by John S. White, Jr. 489-1500.
2/1/74	Hearing (attyspresent) motions to be filed no later than 4-1-74, Deft Bushnell, New Bail status $50,000. P.R.B. secured by $2,500, cash on surety, Deft to post bail by 2-5-74 noon. Tyler,J.
3/22/74	PRE-TRIAL CONFERENCE HELD BY TYLER, J.
4/10/74	Filed Stip & Order that the bail limits of deft Natelli is ext. to include him to travel to Italy and France for the period from Apr 12 to Apr 28, etc. Tyler, J.
4/12/74	Filed defts Natelli and Scansaroli motions for dismissal, severance copy and inspection, etc. ret: 4/19/74.
4/12/74	Filed defts Natelli and Scansaroli memo of law in support of pre-trial motion made by same.
4/25/74	Filed Govt's affdvt re: response to various motion of the defts.
4/25/74	Filed Govt's memo of law in opposition to defense motions.
5/2/74	Filed reply memorandum of the defts Natelli and Scansaroli on the joint pre-trial motions.
5/21/74	Filed memo of law in support of the joint pre-trial motions of the defts Natelli and Scansaroli.
5/21/74	Filed reply memo of law of the deft Natelli and Scansaroli on the joint pre-trial motions.
5/21/74	Filed Govt's surreply memorandum.

Date	Proceedings
5/21/74	Filed OPINION # 40725 - motions disposed of as follows: - Natelli and Scansaroli's motion to admit polygraph evidence denied. - Randell, Natelli and Scansaroli's motions to comple disclosure of certain portions of the Grand Jury proceedings-denied. - Natelli and Scansaroli's motion to inspect Analyses by SEC employees of NSMC Financial Statements-denied. - Davies, Natelli and Scansaroli's motions for trial severance-denied. - Randell, Natelli and Scansaroli's motions to dismiss count 2 for improper venue-denied. - All defts's motion to obtain tapes or transcripts of their conversations-adjourned to later date.
7/3/74	Filed Govt's bill of particulars.
7/12/74	Filed transcript of record of proceedings, dated 2/21/74
7/12/74	Filed transcript of record of proceedings, dated 1/28/74
7/15/74	Pretrial conference held. All matters adjourned to 8/23/74 at 2:15 PM. Tyler,J.
7/16/74	Filed transcript of record of proceedings, dated 5/3/74.
7/23/74	Filed deft A. Natelli's notice of motion re: severance ret: 8/23/74.
7/23/74	Filed memo. of law in support of the joint motion of defts. Natelli and Scansaroli for a severance.
8/23/74	Deft's Natelli & Scansaroli-Filed memo=Endorsed on motion filed 7-23-74. Motion granted on consent of the prosecution. So ordered. Tyler, J.
9/6/74	Filed Govt's affdvt. re: response to the motion to sever filed on behalf of defts Natelli and Scansaroli.
10/9/74	Filed pretrial memorandum of the defts. Natelli and Scansaroli.
10/9/74	Filed defts. proposed examination of prospective jurors.
10/16/74	A. Morton-- Filed papers originally, filed with Magistrate Raby: (1) Docket Entry Sheet (2) Criminal Complaint, S.D.N.Y. (3) Disposition Sheet (4) Appointments of Counsel (5) Notices of Appearance

Date	Proceedings
10/17/74	Filed Govt's proposed examination of prospective jurors. (copy)
10/17/74	Filed Govt's memo. of law in opposition to defts' motion to preclude proof. (copy)
10/17/74	Filed Govt's memo. of law re: the Grand Jury testimony of Natelli and Scansaroli is admissible. (copy)
10/18/74	Filed Govt's memo. of law in opposition to Scansaroli's motion for severance.
10/21/74	Filed defts' reply memorandum of law, re: Govt's memo. of law.
10/21/74	Trial begun as to count 2 with a jury, before Judge Tyler.
10/22/74	Trial cont'd.
10/23/74	Trial cont'd.
10/24/74	Trial cont'd and adjourned to 10/29/74.
10/29/74	Trial cont'd.
10/30/74	Trial cont'd.
10/31/74	Trial cont'd.
11/1/74	Trial cont'd.
11/4/74	Trial cont'd.
11/5/74	Trial cont'd.
11/6/74	Trial cont'd.
11/7/74	Trial cont'd.
11/8/74	Trial cont'd and adjourned to 11/11/74. Tyler, J.
11/12/74	Filed transcript of record of proceedings, dated 8/20/74
11/18/74	Filed defts' joint memorandum on the order of summations
11/18/74	Filed Govt's offer of proof.
11/18/74	Filed deft. Natelli's memo. of law in support of motion for judgment of acquittal.
11/18/74	Filed memo. of defts. Natelli and Scansaroli in support of motion to dismiss the indictment.

Date	Proceedings
11/18/74	Filed memo. of law in support of defts.' objection to the Govt.'s use of any expert testimony or lay testimony on the issue of materiality.
11/18/74	Filed Govt.'s requests to charge.
11/18/74	Filed Govt.'s suppl. requests to charge.
11/18/74	Filed Govt.'s suppl. requests to charge No. 2.
11/18/74	Filed deft. Natelli's contentions.
11/18/74	Filed defts. Natelli's requests to charge.
11/18/74	Filed memo. of law in support of defts.' objection to the Govt.'s use of any expert testimony of lay testimony on the issue of materiality.
11/18/74	Filed Govt.'s memo. testimony of fraud victim witness.
11/18/74	Filed defts. reply memorandum.
11/18/74	Filed Govt's proposed examination of prospective jurors.
11/18/74	Filed Govt.'s memo. in opposition to defts.' motion to preclude proof.
11/18/74	Filed Govt.'s memo. The Grand Jury testimony of Natelli and Scansaroli is admissible.
11/11/74	Trial cont'd
11/12/74	Trial cont'd.
11/13/74	Trial cont'd.
11/14/74	Trial cont'd. and concluded. Defts. Natelli & Scansaroli - guilty on count 2. Sentences set for 12/27/74. Motions ret: 12/20/74. Deft. cont'd. on bail to sentence. Tyler,J.
11/26/74	Filed transcript of record of proceedings, dated 8/20/74
11/26/74	Filed transcript of record of proceedings, dated 8/23/74.
12/11/74	Filed memo of law in support of deft. Natelli's motion for a judgment of Acquittal or, in the alternative, for a new trial.
12/18/74	Filed Govt's memorandum in opposition to post trial motions.

Date	Proceedings
12/27/74	Filed deft. Anthony M. Natelli's notice of appeal from judgment of conviction entered 12/27/74. Miled copies.
12/27/74	ANTHONY M. NATELLI-filed judgment-deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR pursuant to Sec. 3651 of T. 18, U.S. Code. The deft. is confined in a jail type institution for a period of SIXTY (60) DAYS. Execution of the remainder of the sentence is suspended and deft. is placed on probation for a period of TEN (10) MONTHS to commence upon expiration of confinement, subject to the standing probation order of this Court. Committed fine of $10,000. on count 2 to be paid within 60 days. Tyler,J. issued copies. ent. 1/2/75
1/2/75	Filed transcript of record of proceedings, dated Oct. 21, 22, 23, 24, 29, 1974.
1/2/75	Filed transcript of record of proceedings, dated Oct. 30, 31, Nov. 1, 4, 5, 1974
1/2/75	Filed transcript of record of proceedings,dated Nov. 6, 7, 8, 11, 12, 1974.
1/2/75	Filed transcript of record of proceedings, dated Nov. 13, 14, 1974.
1/2/75	Filed transcript of record of proceedings, dated 12/27/74 (Natelli, Scansaroli)
1/7/75	Filed Affidavit of Franklin B. Velie, Assist. U.S. Attorney, dated May 3-74, in response to reply memorandum submitted by defendants in support of various motions.
1/7/75	Filed Memorandum, received on Dec. 10-74, in support of Defendant Natelli's motion for a judgment of acquittal or, in the alternative, for a new trial.
1/7/75	Filed Memorandum, received on Dec. 13-74, in support of motion for a judgment of acquittal or for a new trial.
1/8/75	Filed ORDER that all portions of the transcript of the trial in this action which have not heretofore been transcribed shall be transcribed and made available to the defts. upon their agreement to pay all costs incidental thereto. Tyler, J.
1/8/75	Filed transcript of record of proceedings, dated: Nov. 5,8, 1974
1/8/75	Filed transcript of record of proceedings, dated: Dec. 20, 1974

Date	Proceedings
1/14/75	Filed request No. 8-Responsibility of Auditors. Copy received on Nov. 11-74 by U.S. Attorney.
1/15/75	Filed notice that the record on appeal (Natelli, Scansaroli has been certified and transmitted to the U.S.C.A.
1/20/75	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.
1/20/75	Filed govt's designation of exhibits to be transmitted to the U.S.C.A.
1/20/75	Filed stipulation transmitting true copy of originally filed document to the U.S.C.A. in lieu of missing original.
1/20/75	Filed transcript of record of proceedings dtd: Jan. 10-75.
1/20/75	Filed memo-end. on motion docketed this date. The within motion is denied except the extent that the requirements for paying the $10,000 committed fine are modified as follows: (1) deft. must pay $4,500 by 4/1/75, (2) the balance, or $5,000 must be paid by 5/1/76, In all other respects, the motion is denied. Tyler, J. mn.
1/21/75	Filed memo-end. on motion docketed 1/16/75 . . . I have earlier disposed of this motion by a memorandum endorsement put on the back of another set of the attached motion papers. Tyler, J. mn.
1/23/75	Filed notice the suppl. record on appeal has been certified and transmitted to the U.S.C.A.
1/23/75	Filed stipulation designating certain bulk exhibits to be held in attorneys offices, and to be sent to U.S.C.A. only when requested by that court.
3/27/75	Filed deft's (A. J. Natelli) affidavit & notice of motion to require deposit of fines or posting of bond pending appeal ret. 4/4/75.
3/28/75	Filed transcript of record of proceedings, dated 1/31/75.
4/21/75	Filed memo-end. on motion docketed 3/27/75. Motion withdrawn. Bonsal, J. mn.

Date	Proceedings
6/10/75	ANTHONY NATELLI-Filed STIP & ORDER extending deft's. bail limits to permit travel to Bermuda during the period 6/23/75 through 6/30/75 . . . . .. Owen, J.
4/23/76	ANTHONY NATELLI - Filed dfts. Notice of Motion for an order reducing the sentence imposed. Ret. 5/4/76
4/23/76	ANTHONY NATELLI - Filed dfts. Memorandum of Law in support of motion to reduce the sentence of Anthony M. Natelli.
4/23/76	ANTHONY M. NATELLI - Filed defts. Notice of Motion for an order for a new trial on newly discovered evidence. Ret. 5/4/76
4/23/76	ANTHONY M. NATELLI - Filed Defts. Memorandum of Law in support of motion for a new trial on newly discovered evidence.
4/30/76	Filed True copy of order of the Supreme Court of the U.S. that the petition of Anthony M. Natelli for a writ of certiorari herein to the U.S.C.A. is denied. Clerk m/n
5/20/76	Filed True Copy of USCA Mandate with opinion attached. Ordered that judgment of District Court is affirmed as to ANTHONY M. NATELLI but the judgment as to JOSEPH SCANSAROLI be & it is reversed & the action as to JOSEPH SCANSAROLI is remanded to the District Court for further proceedings as indicated . . . (mailed notice) Case Reopened.
5/20/76	Filed True Copy of USCA Mandate Ordered Opinion of July 28, 1975 & Judgment entered as to Dft. Joseph Scansaroli are thereby vacated. (mailed notice)
5/20/76	Anthony M. Natelli, Joseph Scansaroli - Filed True Copy of USCA Mandate. Judgments of District Court are affirmed in accordance with opinion of this court (See Attached Opinion) (mailed notice)
5/20/76	ANTHONY M. NATELLI, JOSEPH SCANSAROLI - Filed True Copy of USCA Mandate with opinion attached. Opinion as to Joseph Scansaroli & Judgment are hereby reinstated in accordance with the opinion of this court. (mailed notice)
6/15/76	ANTHONY M. NATELLI - Filed Gov'ts Memorandum in opposition to Natelli's motion for a new trial & for reduction of Sentence.
9/1/76	ANTHONY M. NATELLI - Filed Transcript of proceeding dtd. 6/24/76.

Date	Proceedings
10/21/76	ANTHONY M. NATELLI - Filed Memorandum & Order. Ordered Motion for New Trial & Motion for reducing sentence are denied . . . . Owen J. (mn)
10/28/76	ANTHONY M. NATELLI - Filed Dfts. Notice of Appeal from Order dtd. 10/21/76. (mailed copies)
11/3/76	ANTHONY M. NATELLI - Filed Dfts. Notice of Motion for order for reduction of sentence. Ret. 10/21/76.
11/3/76	ANTHONY M. NATELLI - Filed Memo. End. on motion dtd. 11/3/76. Motion denied. Owen J. (mn)
11/15/76	Filed letter dated June 24-76, from U.S. Govt. to Judge Owen.
11/15/76	Filed deft. Anthony M. Natelli's Reply Memorandum to the Govt's memorandum in opposition to deft's motion for a reduction of sentence and a new trial.
11/15/76	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.
11/15/76	Filed stipulation for inclusion of transcripts in the following cases to the U.S.C.A.: U.S.A. v. MULLEN, 74 cr. 1172, Brieant J; U.S.A. v. MULLEN, 75 cr. 179, Brieant J.
11/18/76	Filed Memorandum In Support of the motion to reargue the application to reduce the sentence of Anthony M. Natelli.
11/[illegible]/76	Filed Notice of Certification of Record to the USCA.
12/2/76	Filed Copy of Order from the USCA. dtd. 11/11/76, Order that record be filed on or before 11/22/76. If the appeal is not filed the appeal shall be dismissed forthwith. Etc ADF. (mn)

INDICTMENT

UNITED STATES v. RANDELL, et al, No. 74 Cr. 43

BEST COPY AVAILABLE

COUNT TWO

The Grand Jury further charges:

1. On or about September 27, 1969, in the Southern District of New York, defendants CORTES W. RANDELL, ROBERT C. BUSHNELL, DENNIS M. KELLY and BERNARD J. KUREK, as responsible officers of NSMC, and ANTHONY M. NATELLI and JOSEPH SCANSAROLI, as independent auditors of NSMC, unlawfully, wilfully and knowingly made and caused to be made false and misleading statements with respect to material facts as set forth in paragraphs 3 and 4 of this Count in a proxy statement for NSMC dated September 27, 1969.

2. Said proxy statement solicited approval by the NSMC shareholders of the issuance of additional shares of NSMC common stock and the approval of certain mergers, and was required to be filed and was filed with the SEC pursuant to Title 15, United States Code, Section 78 n(a) and Rule 14a-6(c) promulgated by the SEC thereunder.

3. Said proxy statement contained an "audited" statement of earnings for NSMC for the fiscal year ending August 31, 1968, which differed from a previous "audited" statement of earnings for the same period contained in an annual report to stockholders for that fiscal year. The difference was explained in the following footnote:

> "Net sales and earnings as originally reported to stockholders in the annual report [for the year 1968] and the amounts as shown in the statement of earnings in this proxy statement are reconciled as follows:
>
> Net sales
>
> | | |
> |---|---|
> | Originally reported | $ 4,989,446 |
> | Pooled companies reflected retroactively | $ 6,552,449 |
> | Per statement of earnings | $11,541,895 |
>
> Net earnings
>
> | | |
> |---|---|
> | Originally reported | $ 388,031 |
> | Pooled companies reflected retroactively | $ 385,121 |
> | Per statement of earnings | $ 773,152 " |

This explanatory note was materially false and misleading in the light of the circumstances under which it was made because, as the defendants well knew but failed to disclose, among other things: (a) approximately one million dollars, or more than 20% of the 1968 "net sales originally reported" had proven to be nonexistent by the time the proxy statement was filed and had been written off on NSMC's own internal

books of account; (b) net sales and profits of "pooled companies reflected retroactively" were substantially understated; and (c) net sales and profits of NSMC were substantially overstated.

4. Said proxy statement also contained an "unaudited" statement of earnings for the nine months ended May 31, 1969 which stated "net sales" as $11,313,569 and "net earnings" as $702,270. These figures were materially false and misleading because, as the defendants well knew at the time the proxy statement was filed, "net sales" for that period were less than $10,500,000 and NSMC had no earnings at all.

(Title 15, United States Code, Sections 78ff, 78n; Title 18, United States Code, Section 2.)

EXCERPTS FROM GUILTY PLEA OF
DENNIS M. KELLY

[Page 7]

In connection with Count 1, I participated in two acts. I received a letter from Jim Graham of the Pontiac Division of General Motors, dated April 15, 1969. This concerned a proposal we had made to Pontiac to use the services of National Student Marketing Corporation to reach the youth market.

This letter stated, in effect, that Pontiac was considering our proposal for services in the amount of $1,200,000 and I delivered this letter to Mr. Randall.

Soon thereafter I learned that the letter had been altered to confirm a sale. I knew that the letter as altered was going to the accountants to support the booking of the Pontiac transaction.

I also knew that this information would be reflected in the earnings of NSMC for the fiscal quarter then

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ending.

I did not inform the accountants or anyone else of the alteration of the letter.

In August 1969, I was requested by Mr. Randall to obtain a written confirmation from Eastern Airlines regarding a contract for NSMC services in the amount of $820,000.

At that time I knew that the Pontiac transaction was being written off and that Mr. Randall wanted additional sales or acquisitions to fill the void.

I obtained this confirmation letter from Mr. Mullen of Eastern Airlines, dated August 14, 1974, and delivered it to Mr. Randall.

However, Mr. Mullen had also requested a letter from NSMC to the effect that Eastern Airlines could cancel part or all of the contracted services before December 31, 1969.

This letter, which was proposed,was signed by Mr. Randall and I delivered it to Mr. Mullen.

I subsequently spoke to the accountants relative to the nature of the services to be provided under the Eastern Airlines contract.

I did not inform them of the existance of the

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conditional letter which was given to Mr. Mullen, although I had reason to believe that they did not see or know of this letter and had they known, would not have booked the Eastern transaction.

I knew that the Eastern Airlines contract was being booked and as such would be reflected in the reported earnings of NSMC for the nine-month period ending May 31, 1969, which reported earnings would be sent to shareholders of NSMC.

In connection with both transactions, it was my firm belief that both contracts would be performed. However, I did know at the time that they were reflected in the shareholders' report that they were not firm contracts.

EXCERPTS FROM GUILTY PLEA OF
CORTES W. RANDELL

[Page 7]

A From the beginning of National Student Marketing until early 1970, I was the chief executive officer and principal shareholder.

At the close of the fiscal year and at August 31, 1968, there appeared on the financial statements of National Student Marketing, an item known as contracts in progress, or unbilled receivables.

This item reported assets and income of the corporation which was established with the approval and consent of our auditors. The item was predicated on our

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relationship with a large number of clients. It was respresented as income for the year 1968 and that it would be received in the next fiscal year.

With the benefit of hindsight, this accounting concept represented more of an expectation or hope rather than a firm assurance of income.

It did, however, represent a significant portion of the income statement and balance sheet of the parent company, National Student Marketing.

Beginning in early 1969 and thereafter it came to my attention that these contracts in progress would not produce the income that we had previously anticipated.

However, because of repeated delays in removing substantially inactive and discredited contracts, the earning of National Student Marketing were repeatedly overstated. Although I continuously hoped that these contracts would be fruitful, I permitted my unrealistic expectations to seriously affect my judgment, with the result that financial statements of National Student Marketing became inaccurate.

During the period from 1968 through early 1970, acquisitions were effected on the strength of these financial statements.

I also participated in giving these things of

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rgaremg

value to two account executives so as to continue a favorable business relationship with their companies.

With respect to Count 2 of the indictment, I participated in the alterationof a supporting financial

document, the so-called Pontiac letter, in an effort to increase the strength of a client commitment so that it cold be booked as earnings in the financial statement of February 28, 1969.

Q How about the Eastern Airlines letter?

A Yes, sir. In place of this commitment, another commitment-- excuse me, efforts to have this included in the proxy were unsuccessful. In place of this commitment, another commitment, that is the Eastern Airlines letter, was substituted wherein I participated in failing to provide the auditors with complete information with the result that certain earnings were recorded in the proxy which may not have been reported had the auditors been given full information.

With respect to Counts 8and 11 of the indictment, I acknowledge that the representatives of Interstate Corporation and Stuckey-Spear, two companies which National Student Marketing acquired, relied upon the proxy statement of National Student Marketing Corporation referred to in Count 2, which I knew contained overstated earnings.

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I recognize these errors of my judgment and

deeply regret my acts, not only because of the personal consequences to me, but also because of the humiliation and embarrassment to my family and those who have placed their trust in me.

EXCERPTS FROM TRIAL TESTIMONY

Government's Opening Statement

[Page 30]

MR. VELIE: May it please the Court, defendant's counsel, Mrs. Lights, ladies and gentlemen of the jury. This case is about fraud and deceit. It is about fraud and deceit in the preparation of phony financial statements by accountants. The accountants are the defendants, Anthony Natelli, who sits here, and Joseph Scansaroli, who is at the end of the table.

It is the preparation of fraudulent financial statements which isthe crime charged in the indictment. Despite what you heard when you heard the plain language of the indictment read to you, the Government assures you, I assure you, this isa simple case.

The Government is going to prove to you that the defendants, Mr. Natelli and Mr. Scansaroli, prepared financial statements for a company called National Studen Marketing Corporation. Those financial statements said, in

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gawe 2

effect, that the company had tremendous earnings and the company had tremendous sales. In fact, when they said it, Mr. Natelli and Mr. Scansaroli knew that the sales were non-existent and so were the earnings.

People who read those financial statements were cheated. They gave up money and they gave up property in order to get the stock to buy, in effect, the stock of National Student Marketing. They gave up their own businesses in many cases, in order to receive National Student Marketing stock. They wanted to own National Student Marketing stock because they thought it had wonderful earnings and sales just the way the financial statement said.

But the financial statements were not true and these people were cheated.

Naturally it is against the law to put false or misleading information in financial statements. You will be hearing about the law from Judge Tyler at the end of the case. The law for your purpose is the Securities and Exchange Act of 1934. It was passed and signed in 1934 to protect the nation from economic disaster by securing the integrity of the securities markets.

The law requires disclosure of financial information about companies who sell their stock to the public. That way people will know what they are getting.

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Some of you said that you owned stock, and you'll forgive me if I talk about this at some length. Others of you may not be familiar with this. The fact is, if you go out to the market to buy a tomato, you can look at that tomato, you can hold it in your hand and squeeze it, look at the price, and you know pretty much what you are getting for that price.

Shares of stock are just paper. One piece of paper looks pretty much like another. So that the shares of stock, for instance, in a fly by night uranium company looks just as good to many people as the shares of Telephone Company.

How do you protect yourself when you buy stock? The law protects you. The law says to people who sell stock, people like you, members of the public, the company must tell what its sales are, what its assets are, what it owns, what its earnings are. That way people stand a chance when they go out to buy stock, of not getting cheated.

The law says that the financial statements that are required to be made must be filed with the Securities and Exchange Commission. False statements, as I have already said, in those statements required to be filed is a crime. It is a fraud.

My name is Frank Velie. I'm an Assistant United

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States Attorney. It is myduty to present this case to you on behalf of theUnited States.

Seated at the Government's counsel table are Jed Rakoff, who is also an Assistant United States Attorney, Jeffrey Rosen, who is a lawyer for the Securities and Exchange Commission, and Ian Dingwall, who is accountant for the Securities and Exchange Commission.

Our duty will be to prove to your satisfaction under the law as it is explained to you by Judge Tyler, that Mr. Natelli and Mr. Scansaroli prepared the financial statements we are all talking about here, to prove that the financial statements were false in that they showed tremendous sales and earnings when, in fact, these fellows knew there were no sales and earnings, to show they knew these sales

and earnings didn't exist, that they knew they were putting out phony financial information.

* * * *

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The proxy statement also included figures for the year 1969, precisely figures for the first nine months, first three quarters of 1969.

The indictment charges that those figures are false also.

A little background information. I will show you why that's been charged. While the proxy statement was in preparation in August of 1969, the Board of Directors of a company called Interstate National Corporation, a large insurance company based in Chicago, the Board of that company was deciding whether to be acquired by National Student Marketing. They had the 1968 report, showed great figures, they had a draft proxy statement that showed pretty good figures, too. It didn't yet have in it -- it was an early draft and it didn't have in it the nine month figures. They couldn't vote on the matter until they had all the figures. They were waiting.

Mr. Randall, who was at one of their meetings, left that meeting in the late afternoon and flew in his per-

sonal Lear Jet from Chicago to Washington, D.C., had he picked up Mr. Natelli and Mr. Scansaroli, picked up Mr. Kurek, picked up some other people, and he flew them from Washington right here in New York City, to Pandick Press.

Pandick Press is a financial printer. It was there

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gawe that draft proxy statements were being printed up by this printer.

These accountants, Mr. Natelli and Mr. Scansaroli, plus Mr. Randall, plus Mr. Kurek and these other people were working long hours into the night, into the next day and into the next night, preparing these figures for the proxy statement.

Along about 11 o'clock at night, some figures were prepared for the nine-month statement. This is the period that ended as of May, two months before all this.

These figures were phoned from the Pandick Press to Chicago where the Interstate Board people were waiting. As they continued to work into the night, at about 3 o'clock in the morning, Mr. Natelli spoke to Mr. Randall about the Pontiac contract. You remember this is the so-called commitment for about a million dollars, over a million dollars from

Pontiac. That thing had been booked as of February, here it was August and Mr. Natelli said, in effect, this thing won't pass the smell test.

Booked as of February. Here it is August, no billings, no activity, you haven't done the work, we haven't seen anything to warrant carrying a contract this enormous. You've got to take it out.

Well, Mr. Randall didn't bat an eye. He cooly--

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this is 3 o'clock in the morning at the printers -- he cooly suggested switching for the Pontiac commitment a commitment for Eastern Airlines. The Eastern Airlines commitment was supposedly a sale made in the period which had ended in May. Again, it is August. Nobody but nobody, had mentioned this enormous sale, virtually the same size as the Pontiac contract, between May and August.

Here it comes up at 3 o'clock in the morning in a moment of crisis.

Well, Mr. Natelli thinks about it for a little bit and lets it go in. It does go in. It goes in as a large part of the earnings for the 1969 first nine months.

With the write off of the Pontiac contract -- I don't know if you are totaling it up. It would be totaled up for you later.

Over an 18 month period, $3.3 million of contracts of this kind had been booked and over $2 million had been written off. The proxy statement didn't say any such thing, didn't tell anybody about that fact, didn't tell anybody about the million dollar write off itself, didn't tell anybody about that switch pulled at the last minute at the printers.

The proof will show that without billed accounts receivables, if you were to take them off the books, that nine-month earnings statement would show a loss, too.

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Well, of course the Interstate National Board didn't have any of these facts. They were known to Mr. Natelli and Mr. Scansaroli and some of the National Student Marketing people, but the Interstate Board didn't know it. After their meeting and after they got this information with respect to the nine month figures, which had been telephoned to them, not the bad news, just the nine-month figures that the company claimed they had, the Interstate Board in August voted to be acquired by National Student Marketing so that

the 1300 people who had invested in the insurance company, would receive instead shares of National Student Marketing.

Well, a few days after the events at the Pandick Press, something else happened which I am sure you will be interested in. Another accountant from Peat, Marwick and Mitchell, a man by the name of Douglas Oberlander, discovered the fact that virtually the entire balance of 1968 unbilled accounts receivable contracts was still on the books, it hadn't been written off. Virtually that entire balance was no good and should be written off. He prepared a schedule which proved it.

He showed it to Mr. Kurek. Then he showed it to Mr. Scansaroli. Then Mr. Scansaroli talked to Mr. Natelli about it. Well, Mr. Natelli and Mr. Scansaroli decided that these facts didn't have to be disclosed either. So the proxy

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statement was filed with the SEC about a month later, in September of 1969, and it didn't have a hint in it of any of these dismal pieces of news that I have been standing here telling you about.

There wasn't a hint that the large earnings of 1968, 1.7 million of unbilled accounts receivables sales,

had been written off or were known to be highly suspect and uncollectable and inactive, without a hint that the 1969, the nine-month profits was based on more of the same, similar unbilled accounts receivable, including that last minute switch, the Eastern Airlines contract popped in there at 3 o'clock in the morning.

Instead that proxy statement showed a picture of dramatic growth in National Student Marketing and glowing economic health.

On the strength of these entirely positive financial statements in the proxy statement, three more companies were promptly gobbled up, Frommer, Five-Dollar-A-Day Tours were gobbled up, a company called Mar-Clay, Mail Bag International; two companies not mentioned in the proxy statement, Simmons Associates and a company called Varsity House, all of them essentially for National Student Marketing stock.

People gave up their businesses for the stock thinking they were getting a good deal. None of the people

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who gave up their companies knew the awful truth that I'm standing here telling you about, truth known, of course, to Mr. Natelli and Mr. Scansaroli, as the proof will show.

The final incident, the Government submits, will show you Mr. Natelli's intent to deceive beyond any question.

A few days before the closing of the final merger contemplated in the proxy -- this is again the Interstate National deal -- remember in August the Board of Directors made a decision whether to be acquired. Now they are going to have a closing in October, and a closing is like a house closing. It is actually the place where the deal takes place, where you give over one thing and receive the other. They are going to have a closing on October 31 at which time the Interstate shareholders would become shareholders of National Student Marketing and give up their investment in the insurance company.

Mr. Natelli pursuant to the merger agreement, asked an accountant who worked for him at Peat, Marwick and Mitchell, to prepare what's called a comfort letter.

A comfort letter is a letter from the accounting firm to the company to be acquired and it tells him, in effect, we don't know of any new developments that might affect your judgment as to this deal since the time that you

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received the last news from us.

Well, the accountant man by the name of John Johnston, went to work on the comfort letter and he promptly found the write offs that Mr. Oberlander had been talking about in his schedule and which you will recall Mr. Natelli and Scansaroli declined to make. Mr. Johnston found some other things as well.

So Mr. Johnston and his immediate supe ior, a man by the name of Bill Cologna, drafted a pretty sober comfort letter. It had some bad news in it.

When Mr. Natelli returned from a brief illness back to his office, most of the work on the comfort letter had been done.

Now, Mr. Johnston and Mr. Cologna are essentially honest accountants. They called it the way they saw it in the brief amount of time available to them. They went in there and found some bad news and wrote a letter which reflecte it. While the bad news was reflected in the comfort letter that they were able to find, it couldn't have all the bad news. That was known only to Mr. Randall, Mr. Kurek, Mr. Scansaroli and Mr. Natelli. Mr. Scansaroli at that time was working for National Studen Marketing. Mr. Natelli knew that a decision had to be reached essentially that day by the Interstate people whether to close the al. Did he pipe

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up with this additional information about the Eastern switch, about the million dollar write off? No, the comfort letter went out and it gave the impression that maybe there were only two or three hundred thousand dollars of contract write offs when he knew there had been over 2 million. So the comfort letter went out and it didn't have enough news in context. While the Interstate people were startled, what they did see, they couldn't see it all in context. They permitted the deal to close. All 1300 of the Interstate shareholders gave up their investment in this insurance company in exchange for National Student Marketing stock.

A brief word at this time about some of the proof. You will be hearing in the case from what the law calls an accomplice witness. You will be instructed that the law is with respect to an accomplice witness, that you should scrutinize his testimony with care.

[lines 18-25 are blank]

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The Government invites you to scrutinize the testimony of the accomplice witness with care. You will be hearing from Mr.Bernard Kurek, comptroller of National Student Marketing. He will tell you that he has pleaded guilty to this charge and he will be here to testify.

He will tell you in brief outline about how National Student Marketing didn't have a gain until these unbilled accounts receivable that were booked in year-end 1968, how they came to be written off, how Mr. Natelli and Mr.Scansaroli learned about the writeoffs and participated in writeoffs.

He will tell you what happened at the Pandick Press at three o'clock in the morning.

Scrutinize his testimony with care. Take a look and see the extent to which he is corroborated by documents in evidence, by the testimony of other people.

Now, the indictment specifically charges two false statements, false statements in two places in the

proxy statement.

As I have already stated, one has to do with 1968 sales and, in essence, it is this: The Government will prove that Mr. Natelli and Mr. Scansaroli knew that a million dollars of 1968 sales had been written off and they didn't give a hint of it. They not only failed to disclose it, but they buried the truth, they buried the body where

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nobody would find it. They subtracted the losses written off from National Student Marketing contracts with figures from newly acquired companies. That way nobody could tell what actually happened.

I am going to take a minute now to go over to the blackboard and give you an illustration, if you will bear with me, of what it is that you heard when Judge Tyler read you the indictment this morning.

This is the figures in the footnote regarding 1968 sales and earnings which Paragraph 3 of the indictment which you heard this morning talks about.

These are the figures for 1968. Original and reported, almost $5 million of sales for National Student Marketing as the company was constituted when it reported its 1968 sales and earnings.

After that and before the proxy statement was prepared they obtained some other companies, pooled companies and they have pooled together in the proxy statement the earnings of the pooled companies, newly-acquired companies, and the company the way it existed when they first reported the earnings. These are the companies I think I told you Mr. Randall went out and gobbled up on the strength of the earnings in the 1968 report.

Add them together and you get the figures which

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are displayed elsewhere in the proxy statement for 1968. A similar calculation is done. This is sales, these are earnings, earnings derived from those sales.

What the proxy statement doesn't tell anybody is that out of the $5 million in sales, these guys knew that a million dollars, $1 million, had been written off. This figure here is a phony also, the line for pooled companies.

This is where I told you they buried the body. You will find from the proof that the sales of the pooled companies isn't this number at all, it is a larger number.

What Mr. Natelli and Mr.Scansaroli did was take three-quarters of a million dollars of these, a million dollars written off, and subtracted it from the pooled companies which didn't lose it. Similar calculations happened with respect to the earnings.

The portion of the earnings you will find was subtracted from the earnings of the pooled companies. Nobody could tell that this figure had been changed or should have been changed because a lot of earnings had been written off.

That is not all. The proxy statement had a false statement in another place, and I think I have already told you this as well, nine months, three-quarters earnings

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for 1969. The nine month figures in the proxy statement blandly state that National Student Marketing had earnings of about $700,000.

Now, a healthy chunk of this was made up of the Eastern Airlines commitment which you heard about was hatched at three o'clock in the morning at the printers. I think I have already told you that without the unbilled accounts receivable sales on the books at the time, there

wouldn't have been any earnings at all for National Student Marketing for that nine-month period.

You see, by then Mr. Natelli and Mr. Scansaroli knew that with respect to unbilled accounts receivable sales, something like $3.3 million of them had been booked and over $2 million of them had been written off and a large part of the balance just couldn't be collected and was sitting there on the books uncollected.

Nowhere in the proxy statement did Mr. Natelli or Mr.Scansaroli reveal any of this.

I should point out to you that you will hear evidence of yet more fraud on the part of people besides Mr. Natelli and Mr.Scansaroli. You have heard, in fact, from Judge Tyler when he read the charge to you that various other people are charged with this crime.

You needn't concern yourselves with the guilt or

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innocence of those people. Only two people's guilt or innocence is before you for decision.

But I do want to point out to you that Mr. Randall was, of course, an unscrupulous individual and he cheated a lot of people. He went out and he obtained com-

panies for his company in exchange for stock and never told them what he knew about this fraud either.

Of course, I think you will find that Mr. Randall's fraud couldn't have gotten to first base without the parallel fraud of these accountants, Mr. Natelli and Mr.Scansaroli, who hid the absolute wretched truth from readers of the financial statements.

I think you will also find that Mr. Randall never troubled Mr. Natelli or Mr. Scansaroli with all the gross details of the things that he was doing,Mr. Randall was doing. Mr. Randall in particular didn't tell Mr. Natelli or Mr.Scansaroli everything there was to know about that Pontiac contract which was written off or the Eastern Airlines contract which was hatched at three o'clock in the morning.

The Government submits, however, that the proof will show beyond beyond question that Mr. Natelli and Mr. Scansaroli knew and buried the essential facts, the facts that National Student Marketing had written off a million

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dollars of its 1968 unbilled accounts receivables and with it its .968 profits and that National Student Marketing

had puffed up the 1969 results with the same kind of phony baloney.

They never told anybody about these things.

The case is a simple one even though you will hear a lot of evidence. It boils down to this: When accountants know that a company's sales and earnings aren't there and then go and tell the world that they are, it is a fraud, it is a crime, it is the crime charged here.

Please pay careful attention to the proof as it comes in. Some of the proof may appear to you when you hear it to be complicated or technical.

I will have an opportunity at the end of the case to explain to you what I believe the proof has shown. You will get full instructions on the law from Judge Tyler. I am confident that you will accord to the other attorneys the same courteous attention that you have given to me.

Make no mistake about it, this is an important case. It is important to the defendants, they are charged with a crime. It is important to the Government which is charged with seeing to it that people high and low in life, if they have committed crimes are brought to the bar of justice.

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It is important to the Government and to you we submit to see to it that the integrity of our financial markets and our stock markets are kept sound exactly the way that Congress intended them.

Remember, the proof can only come in one witness, one exhibit, one question or answer at a time.

I do ask you to be patient.

Keep an open mind. Wait until all the proof is in, all the arguments are made, wait until the law is announced to you and then you will have the full picture.

If you accord the defendants and the Government a fair trial on the evidence alone, not on speculation or prejudice or misplaced sympathy or anything else, that is all anybody can ask.

If you do this, if you do decide the case on your oaths, to decide this case on the evidence, I am confident that you will find these defendants guilty as charged.

Thank you.

TESTIMONY OF BERNARD J. KUREK

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Q How did you get to New York, Mr. Kurek?

A I arrived in New York about 10:00 P.M. the evening of August 14.

THE COURT: I see.

Q Tell us what was happening at 7:00 o'clock as you were leaving the office in Washington.

A As I was leaving the office I received a phone call from Mr. Randall who said he wanted me and certain others to meet him at the airport in Washington and fly to New York to work on the proxy.

Q Where was he calling you from, if you know?

A I don't know. He had a phone in his plane, butI don't know if he called from this or not.

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A Very well.

What didyou do after you received this telephone call?

A After I received this telephone call, Mr. Stalick was still in the office. He was one of the fellows that he wanted to go to New York. So I told him to meet me at 8 or 8:30, whatever the time was, at the airport. I called Peat, Marwick and Mitchell's offices and spoke with -- I don't know who I spoke with, but Mr. Natelli and Mr. Scansaroli and John Buck of NSMC, I think, was there, and we all met at the airport for Mr. Randall to take us to New York that evening.

Q Did he pick you up?

A Yes.

Q All right.

Did you fly to New York in Mr. Randall's plane, is that the idea?

A Yes, I did.

Q When you got to New York, where did you go?

A We were taken from the airport down to Pandick Press here in New York.

Q What is the Pandick Press?

A Pandick Press is a printing firm, printing company.

Q What was going on at Pandick Press that evening?

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gawa Kurak - direct

In other words, what was the printing firm

doing, if you can tell us that?

A They were printing the proxy material that was being prepared.

Q All right.

Who was there besides the people you have already mentioned who came there to Pandick Press?

A When we arrived there were three fellows from White and Case who was National Student Marketing's corporation attorneys, Mr. J. Epley was there and two other fellows, John Provine and David Swope.

Q All right.

What happened when you got to the Pandick Press? What were your assignments or what was it that people were doing?

A Well, the group that I came up with from Washington, we were working on financial data that was to be included in the proxy.

Q Did thiswork include work on the nine-month earnings, that is the third quarter earnings?

A Yes, it did.

Q Did you have occasion to use the telephone that evening?

A Yes, I did.

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gawe Kurek - direct

Q What is your best recollection of the nature of the first telephone call you recall?

A The nature of it was a conversation that I had with Don Jeffers who was the treasurer of International -- Interstate National Insurance Company in which I described to him the theory --

MR. MARTIN: Objection, your Honor.

THE COURT: Mr. Velie, you are going to have to help us here. I don't understand what we want to get into a conversation with some insurance company executive about.

Q Tell us what Interstate National Corporation is.

A Interstate National Corporation was one of the companies that was going to be acquired and their information and figures were being included in this proxy.

Q Was Mr. Jeffers interested in receiving the nine-month figures and other information from the Pandick Press?

A Yes, he was.

Q Did you use the telephone in the presence of other persons?

A I did?

Q Yes.

A Yes, there were other persons in the room.

Q Who was in the room, if you recall?

A As I recall, it was the whole accounting group that

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flew up from Washington and maybe Mr. Randall. I'm not --

Q Did you give Mr. Jeffers the information he required

A I gave him the information he asked of me.

Q Did you fix the time of that telephone call?

A No, I didn't.

Q Could you tell us approximately when that was?

A Yes, it was very late in the evening. It could have been 11 or 12 o'clock because it was 8or 8:30 before we ever left Washington. My best guess, it is very late, 11 or 12 that evening.

Q Do you recall later in the evening any conversation with respect to the Pontiac commitment which is the commitment of approximately a million dollars earlier booked?

A Yes, there was conversation that evening.

Q Tell us what you recall of the conversation, who spoke and what was said?

A I recall that Mr. Natelli did not want to leave the Pontiac commitment in the nine-month figures because there had been no billing, no contract or nothing subsequent

to the -- no performance on it subsequent to that April 28 letter that we had here earlier.

Q When was this booked as of?

A It was booked as of February 28, 1969.

Q Can you fix the approximate time of this conver-

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gawe Kurak - direct 256

sation, Mr. Natelli's statement or statements?

A Well, it was early morning, 1 o'clock, two o'clock. As I recall, he finally said he was not going to allow for it to be -- remain on the books as of May 31, 1969.

Q Did Mr. Randall respond?

MR. STILLMAN: I wasn't sure we had Randall in the room, your Honor, according to my notes.

Q Who was Mr. Natelli saying all of this to?

A Primarily he was talking with me.

Q Did he also talk to Mr. Randall?

A I think at some point Mr. Randall came into the room and was made aware of that.

Q All right.

Then what happened?

MR. MARTIN: Your Honor, I think it may be helpful if we get everybody who was present, the best we can.

THE COURT: Once again, I think first of all, Mr. Kurek, what you have been trying to say is that people were flitting in and out to a degree?

THE WITNESS: To some degree there was people in and out.

THE COURT: I think the best way, subject to correction by Messrs. Martin and Stillman, would be to simply say when you are asked these things by Mr. Velie, if you

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would tell us who was speaking and who, if you know, was sitting there close by or standing or whatever was going on. It is the best I can think of to do, gentlemen.

MR. MARTIN: Fine, your Honor. It is obviously a problem. I think to an extent you cured it.

THE COURT: Can we go along, please, Mr. Velie?

MR. VELIE: Yes.

Q You have set the time, as I understand it, somewhere around 2 o'clock, is that correct?

A In the morning, yes.

Q All right.

Tell us who was on the scene at the point at which the conversation takes place?

A The conversation with Mr. Natelli and myself?

Q Yes.

A All right. Mr. Natelli obviously and me, I believe Mr. Scansaroli and John Buck and Stalick were probably there.

That's my best recollection.

The in and out thing, to make it a little clearer, was printers bringing things in and out, but the accounting group primarily stayed around a round table working. So my best recollection is that the gentleman I just mentioned were there.

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gawe Kurek - direct

Q Tell us that conversation as you recall it.

A Well, it was getting late in the evening, early into the morning, and Mr. Natelli had come to the conclusion that he was not going to allow it -- and he told me -- that Pointiac contract, he was not comfortable with it, that he didn't want it in the May 31, 1969 financial statements. He wasn't going to allow for it to remain booked.

Q Did you respond?

A To Mr. Natelli, I don't think I did. What could I say?

Q All right.

Did Mr. Randall join the conversation or have a similar conversation later in the morning?

A Later in the morning Mr. Randall was in the room, and I don't know whether I told him or whether Mr. Natelli told him, but he was made aware of the fact that Pontiac in the presence of the same group that I just mentioned, was not going to remain on the books.

Q Approximately what time was this?

A This is along about 3:30, 4 o'clock in the morning.

Q All right.

What did Mr. Randall say, if anything?

A Mr. Randall said, "Well, I have an Eastern com-

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mitment, an Eastern Airlines commitment. Can we include that in the May 31 statements?"

I don't think I replied and I don't know that anybody replied.

Q What happened?

A What happened was a long about 4 o'clock Mr. Randall placed a telephone call to Mr. Kelly and had me on the phone also, wherein he said, "Dennis, it is early in the morning, take a couple of minutes to wake up."

He said, "You know, the Eastern contract that you are working on" -- I said, "Yes," -- "Or the commitment that you have gotten, would you give Bernie the information."

Dennis Kelly gave me the -- some information on the Eastern commitment over the phone, which I took down.

Q Had you as the controller and chief financial officer of National Student Marketing Corporation ever heard about that Eastern Airlines contract up until [illegible] point?

A Not that I can recall.

Q What did you do with the information that you had?

A I brought it back into the room where we were -- the accountants were all working at the table.

Q Later on did Mr. Kelly appear with a document?

A Yes, sometime the next -- that same day, but in the

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daylight hours, he did bring a letter.

Q Incidentally, is this the same Dennis Kelly who obtained the Pontiac commitment which was written off that night?

A Yes, it is.

Q I show you Government's Exhibit 18 for identification.

Can you tell us what it is?

A This is a copy of a letter dated August 14, 1969 from Eastern Airlines to National Student Marketing Corporation.

Q Concerning the Eastern Airlines commitment?

A Yes.

Q Do I understand the date is August 14, 1969?

A It is August 14.

Q Is this a copy of the letter that Mr. Kelly brought to the printers that afternoon, the afternoon of the 15th?

A It would be -- it is a copy of the letter that was sent, brought down.

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jha Kurek - direct

MR. VELIE: I will offer it.

MR. MARTIN: No objection.

THE COURT: The number of that is what again?

MR. VELIE: 18, your Honor.

MR. STILLMAN: May I just ask who Robert Bushnell is?

THE WITNESS: Is he asking me? Robert Bushnell was another salesman at NSMC.

MR. STILLMAN: Did he do any work on the Eastern account?

THE WITNESS: Mr. Bushnell?

MR. STILLMAN: Yes, sir.

THE WITNESS: Yes, I believe he did.

MR. STILLMAN: Same objection, your Honor, that I previously urged.

THE COURT: I am going to overrule that objection and receive this document as to both defendants.

(Government's Exhibit 18 received in evidence.)

THE COURT: Just to make absolutely sure, let me see if I understand you. When Kelly came in during the daylight hours of the 15th was Scansaroli still there with all the other bookkeepers and accountants?

THE WITNESS: That I cannot answer because certain of them left during the day and I don't recall specifically

what time that letter came or whether Mr. Scansaroli was there at that time.

THE COURT: Then I will change my ruling, Mr.

Stillman.

MR. STILLMAN: Thank you, your Honor.

THE COURT: I will receive it only subject to connection as to your client. As to Mr. Natelli, he does not object so it will be received as to him.

MR. VELIE: The letter, the copy from which I am reading, appears to be on Eastern Airlines stationery, 10 Rockefeller Plaza. It is dated August 14, 1969. It is addressed to Robert C. Bushnell.

Q You just identified him as another NSMC salesman who worked from time to time on the Eastern account.

A That's right.

MR. VELIE: "National Student Marketing Corporation, 345 Park Avenue, New York, New York.

"Dear Bob.

"This is to confirm our verbal commitment given to you on May 14, 1969. We will accept and utilize during the fiscal year 1970, an amount of not less than $820,000 in National Student Marketing Corporation's services as offered to us in your proposal originally submitted on May 7, 1969.

"We look forward to continued success in our youth

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jha Kurak - direct

marketing efforts and to our relationship with National

Student Marketing Corporation.

"Best regards, Thomas E. Mullen, Manager-Special Markets," and it has initials at the bottom, "TEM:jia."

Q Tell me, Mr. Kurek, this letter makes reference to verbal committment dated May 14 and a proposal submitted on May 7. When did the third quarter end?

A May 31.

Q So that May 14 and May 7 are within the third quarter, is that the idea?

A That's correct.

Q I believe you testified that today was your first recollection of having heard anything about this sale.

A I have testified to that effect.

* * * *

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Q Mr. Kurek, I show you Natelli Exhibit J now in evidence, at the portion where it says "Eastern Airlines Youth Marketing Plan," the page right before 2267.

You notice a date on there?

A Yes.

Q Is that May 9, 1969?

A Yes, it is.

Q Between May 9, the date of this proposal, and August 15, 1969, at the printers plant, did anyone as far as

you know, ever say that Eastern Airlines wanted to do any of the things in that proposal?

A Not that I can recall.

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Q I call your attention to the evening of August 14 and the morning of August 15, 1969.

Do you recall going to New York on that occasion?

A Yes.

Q How did you get there?

A We left Washington around ten o'clock the evening of the 14th in Mr.Randall's plane, flew into New York, into Pandick Press.

Q Who is "we"?

A From National Student Marketing there was Mr. Randall, Mr. Kurek, I believe Mr. Stalick and myself. I don't recall anyone else from National Student Marketing.

From Peat, Marwick it was Mr. Natelli and Mr. Scansaroli.

Q All those persons were together in Mr. Randall's plane, is that correct?

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gab -8 Buck-direct

A That's correct.

Q What time did you get to New York City?

A Between 11:00 and 12:00 o'clock, around 11:00 o'clock.

Q When you got here where did you go?

A Pandick Press.

Q What was going on at Pandick Press, as you recall?

A We were preparing the proxy statement and they were printing the proxy statement for us.

[lines 11-25 are blank]

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jhb-1 Buck-direct

Q Do you recall during that evening and the early morning hours which followed any conversations with respect to the Pontiac commitment you have already described?

A Yes, sir. The Pontiac commitment was a topic of conversation.

Q Tell us what you recall being discussed in your presence, identifying the person who speak.

A Well, at the time that we left Washington Pontiac was reflected on the financial statements of National Student Marketing, Mr. Natelli had indicated that he was not satisfied with the contract and unless additional information could be received to his satisfaction that the Pontiac contract would not be included in the

financial figures.

Q All right.

A Once we had arrived at Pandick Press Mr. Natelli again indicated to Mr. Randall that Pontiac as far as he was concerned should not -- would not be included in the financial statement.

Mr. Randall insisted that he could get adequate support for the contract.

As the time went on, we were running out of time, Mr. Randall I guess realized that he wasn't going to be able to get the support for it and agreed to pull the

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Pontiac contract from the figures.

Q Did he do something else?

A Yes. He again indicated another contract that his director of sales had been working on that should be booked at this time.

Q Should be booked as of the May period, is that correct, the period ended in May?

A That's correct.

Q This was August?

A This was August, yes.

Q Do you remember the nature of that commitment, what kind of client was involved?

A I remember it was Eastern Airlines.

Q Do you remember the approximate dollar figure?

A Eight, $900,000, I believe.

Q Gross total, is that correct?

A Yes, gross.

Q A smaller percentage of it, some $519,000, to be attributable to the May period, is that the idea, if you recall?

A I don't recall a figure. It would have been something smaller than the 800,000, but I don't recall the figure.

Q As comptroller of National Student Marketing had

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you heard from May until August anything about this sale before?

A No.

Q The first you heard of it was at what hour?

A Early morning, probably four or five o'clock in the morning, I believe.

TESTIMONY OF ROBERT J. O'CONNOR

[Page 845]

ROBERT J. O'CONNOR, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

MR. VELIE: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. VELIE:

Q Mr. O'Connor, how are you employed, sir?

A Presently?

Q Yes.

A I am financialvice-president for a new hospital in Pittsburgh, Pennsylvania.

Q Are you an accountant?

A Yes.

Q Are you a CPA?

A I am.

Q Was there a time when you used to work for Peat, Marwick, Mitchell & Company in Washington, D.C.?

A There was.

Q When was that?

A December 15,1969, through the first of February,

* * * *

[Page 852]

BY MR. VELIE:

Q Mr. O'Connor, did you have occasion to write off large portions of the Eastern Airlines commitment?

A In the work papers which I reviewed there is a journal entry in my handwriting that does effectively do that.

* * * *

[Page 854]

THE COURT: Let me ask you something, Mr. O'Connor.

You say that you had something to do with writing off the Eastern Airlines contract.

Did you do an analysis of that contract?

A Your Honor, in the work papers the thing that refreshed my memory most -- most of it is numbers -- was a memo written by the senior on the job --

THE COURT" Being whom?

THE WITNESS: John Wharton.

THE COURT: John whom?

A Wharton on that particular part of the job.

THE COURT: All right.

THE WITNESS: -- which referred to a conversation, telephone conversation that I had, that I listened into between various members of National Student Marketing. Their names are in that memo. It refers to this conversation, this telephone conversation, that the write off was really precipitated by -- during that conversation, after National Student Marketing changedtheir marketing representing system, we apparently reviewed it at that time on the telephone, what the

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gawe O'Connor - direct

effect of this change in the marketing -- campus marketing represents system would do to certain big contracts. In there also is a list of the contracts that were noted in one of National Student Marketing's people's handwriting deleted besides various contracts. To the left of that is my notation in red pencil, 24, which is referring to journal entry 24.

I picked up more just from that memo than I did from going through the work papers.

THE COURT: Let me see if I get this.

You are saying that this write off of the Eastern

Airlines contract and other contracts was based upon a change in NSMC's handling of their campus representatives?

A I honestly, sir, do not recall, as I do not recall whether it was a change in the accounting system. However, in the work papers that memo, which is written by the senior on the job, refers to that being the reason for this write off in these particular contracts.

* * * *

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MR. VELIE: What I am trying to get at is this: The Government, it seems to me, may be required to prove that that Eastern contract is no good and uncollectible. An excellent way of proving circumstantially that it was is that it got written off. Wholly apart from the man's testimony --

THE COURT: Mr Velie, you say that the Government is obliged to prove it.

EAL contract was no good. I am not sure that's right. That is not an essential element under this count as

[Page 863]

jhe

I see it.

Now, you may from a tactical point of view want to prove it, and I don't blame you -- that is again beside the point -- through this witness, who doesn't really seem to be

too sure why he made those entries, except to say that it was as a result of a memorandum of his senior, Wharton. Now, I don't think that is a responsible way for the prosecution, if not for the prosecution, for this Court, to proceed.

* * * *

[Page 864]

MR. VELIE: Allow me to respond directly to that. Another way of proving this wholly apart from his testimony or anyone's testimony are the simple black and white entries in a book of account. They show that the Eastern Airlines contract was in fact uncollectable.

THE COURT: May I suggest to you that the obvious inquiry or at least one obvious inquiry is the one I, for example, asked, even I, who don't know anywhere near as much as you do about this case. I asked what I think is a normal, relevant question,did you do an analysis of the EAL contract.

In other words, Mr.Velie, what you don't seem to wish to respond to is my point that it isn't just enough to dangle before the jury the fact, which I assume is the fact, that he made entries which in effect, as he put it, were writeoffs of the Eastern contract. That contract may have been written off for reasons which had no relation to what happened in August of 1969 in Pandick Press or in

the mind of Cort W. Randall or B.J. Kurek or Douglas Howard Oberlander sitting down in Washington all by his little junior self, or Joe Scansaroli or Natelli, the managing partner.

TESTIMONY OF JOHN WHARTON

[Page 981]

MR. VELIE: Your Honor, this brings us up to the matter that you wished us to take up separately.

THE COURT: Mr. Light and ladies and gentlemen, since we have a technical problem at this point, I am going to ask you to take the afternoon recess early. That would give us a chance to get into this matter and then be in a position to move forward I trust without any delay when you come back.

Take your recess at this point.

(Jury absent.)

MR. VELIE: Mr. Whartnn.

J O H N W H A R T O N, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VELIE:

Q Good afternoon, Mr. Wharton. Was there a time when you were employed at Peat, Marwick & Company?

A Yes.

Q In Washington, D.C.?

A That's right.

Q When was that, sir?

A In January of '67 until March 26 of '73.

Q All right. Do you recall working on the calendar

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year end audit in 1969 for NationalStudent Marketing on behalf of Peat, Marwick, Mitchell & Company?

A Yes.

THE COURT: What year end was that?

MR. VELIE: The year that ended 12/31/69.

THE COURT: I thought we were on a fiscal year basis in this company and for the first time we now have a year ending at the end of the calendar year.

Q Mr. Wharton, would you explain why there was that change?

A Just previous to December of '69 there had been a merger with a large insurance company in Chicago, Interstate Financial Corporation, which is by law required to be on a calendar year.

As a result the entire corporation was changing its fiscal year to a calendar year.

Q In that connection you were performing audit work for the year ending 12/31/69, is that correct?

A That's correct.

Q Calling your attention to at or about February 18, 1970, did you have occasion at thattime to speak to anybody about unbilled accounts receivables?

A Yes.

Q All right. Did you have a meeting?

[Page 983]

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A Yes.

Q With whom?

A There was Bob O'Connor of my staff, Doug Garriock of National Student Marketing, Bernie Kurek of National Student Marketing and other individuals may have sat in on this meeting at various times, including Johnnie Johnston of Peat, Marwick.

Q Mr. Wharton, can youtell us, please, as best you recall the conversation there, identifying the persons who spoke? In other words, what each person said.

A Mr.Garriock was in charge of the campus representative division of National Student Marketing. He was headquartered in New York and had come to Washington at our request to review various commitments and contracts relating to their business.

Bernie Kurek had in his possession a listing of

various of these contracts and Mr.Garriock indicated that due to difficulties that they had had in the campus representative section of the company, that they were going to have to reconstitute this section and, in fact, it was practically decimated and for all practical purposes were going out of business as far as the campus rep section was concerned.

In this regard there were a number of contracts

[Page 984]

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and commitments which they would be unable to perform.

As a result, it would be necessary to write these off the books.

Q When you say contracts they were unable to perform, was it your understanding that National Student Marketing would not be able to perform the service it had promised to perform for the clients?

A That is correct.

Q All right. Did Mr. Kurek do something during this meeting?

A Yes. He noted in the margin of the listing of contracts which ones would have to be deleted.

Q Was there more than one contract that would have to be deleted?

A Yes, there was.

Q Do you recall offhand some of the client names or would you like to refresh your recollection?

A Not offhand.

Q Very well. I am going to show you what has been marked Government Exhibit 42 for identification. I am going to turn to Page 0843 and the following pages and ask you to leaf through there and tell us, first of all, if you can identify the little booklet that has been stapled into the work paper?

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A Yes,this is a Peat, Marwick audit binder on fixed fee contracts, unbilled receivables and accrued cost of sales.

Q The whole exhibit?

A Yes.

Q Is the binder?

A Yes.

Q Al l right. The pamphlet I have shown you, what is that?

A These are the items that were deemed necessary to write off our listing of portions of them.

Q Is that your copy of Mr. Kurek's list? Is that

the idea?

A Yes, it is.

Q As far as you can tell, some of the markings in the margin, are those markings you saw Mr. Kurek making?

A Yes, they are

Q All right. Would you read out loud for the Court what it is that you are looking at right now. Identify the page.

A Yes. It is Page 11. Calendar outline of Eastern Airlines 1970 program; program marked posters, promotic of mid-term Easter vacation travel. 15,000 posters. Total commitment is $17,500 delete.

[Page 986]

Q What is the delete?

A The delete is Mr. Kurek's notation that this program would no longer be fulfilled.

Q Is it fair to say that that page and other pages in that booklet each contain little program descriptions of portions of the Eastern Airlines contract?

A Yes, it is.

Q And that Mr. Kurek made a mark in the margin next to several of them?

A Yes.

Q Indicating as to many of them the word delete, is that correct?

A Yes, that is correct.

Q As to some he wrote okay?

A Yes, he did.

Q All right.

MR. STILLMAN: What is the page you are looking at.

MR. VELIE: 0855.

Q Similar markings appear on other pages, is that correct?

A Yes.

THE COURT: What exhibit are we dealing with here?

MR. VELIE: That is 42, your Honor. That is Exhibit

[Page 987]

42 for identification, your Honor.

Q Now, sir, after receiving this piece of paper and other pieces of information at that meeting, did you cause your staff to make accounting entries in the Peat, Marwick work papers?

A Yes, we did.

Q Is it fair to say that accounting entry 24 is some

of the delete entries?

A Yes, it is.

Q Deletes the Eastern contracts in part and some other contracts as well?

A Yes, that is correct.

Q All right.

I show you Government Exhibit 41 for identification at Page 0318.

First of all, this is, is it not, the trial balance binder for that period's audit, is that correct?

A Yes, it appears to be.

Q At Page 0318 there is a description of Entry 24, is that correct?

A That is correct.

Q To speed things up, I am going to read that. It is an entry adjusting downward contracts in the amount of $852,000-some and associated costs, if I have that right.

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And the explanation is unbilled receivables to write off accrued costs and unbilled receivable contracts that were booked at 8/31/69, and subsequently written off on 8/31 to 12/31 period.

Do I have that right?

A That is right.

THE COURT: The total amount written off is?

THE WITNESS: The total amount is $852,496.

Q That includes not only the Eastern contract but several other contracts as well?

A Many contracts.

Q Many contracts?

A Yes.

THE COURT: Can you give me, Mr. Wharton, the amount, the total amount of those portions of the Eastern contract which were written off?

THE WITNESS: Not without adding them up, sir.

Q Do you need scrap paper and pencil?

THE COURT: I think we better rely on you rather than ourselves.

MR. VELIE: Perhaps it will save a little bit of time, your Honor.

Mr. Dingwall here has --

THE COURT: I will take Mr. Dingwall's figures

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for the moment subject to any checking Mr. Wharton wants

to do.

MR. VELIE: Why don't you see if you can check us, Mr. Wharton, while we are doing this. Mr. Dingwall adds up the Eastern amounts of that figure coming out to $591,840, and for the Court's edification and something I need as well, you will recall that the contract was $519,000. It got adjusted upward after it was initially written on so that more of it was written off than was initially written on.

[lines 12 through 25 are blank]

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THE COURT: But the total Mr. Dingwall gets of those portions written off is --

MR. VELIE: $591,84[illegible]. Another 200-some odd are other contracts being written off at the same time.

THE COURT: Does that seem roughly right to you, Mr.Wharton?

THE WITNESS: Yes, just looking at the numbers here.

THE COURT: Is that it, Mr.Velie?

MR. VELIE: Unless the Court needs further information on which to evaluate this voir dire, that is all I believe we need to bring out on the stand.

THE COURT: Mr. Wharton, may I ask this: As I understand what you have said, at this meeting you had this fellow Garriock come down from New York City to the District of Columbia and meet with you, Kurek and theothers and it was Garriock who said that because of problems in the campus division that he felt that they would have to phase out a business to a large extent?

THE WITNESS: To a large extent, yes, that the campus rep organization as it was then constituted was

inefficient and that they weren't getting the results that they thought they were.

THE COURT: And then, as you have explained, he

[Page 991]

was asked and he then set forth those contracts and the specific portions thereof that he thought that his division could not complete and thus should be written off?

THE WITNESS: That is correct.

THE COURT: And Kurek as the vice-president of finance, etc., sat there with this check list which you referred to a moment ago to refresh yourself --

THE WITNESS: Yes.

THE COURT: -- and he either agreed or didn't agree?

THE WITNESS: Yes.

THE COURT: That is how it was done?

THE WITNESS: That is correct.

THE COURT: Any questions, Messrs. Martin and Sbillman?

MR. MARTIN: Judge, just one, which I really think was covered by your Honor, but so the record is clear.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Did anyone at that meeting suggest that Eastern Airlines had denied that it had made a commitment to National Student Marketing?

A No.

* * * *

[Page 1000]

Q And that write off you have told us was made on February 18?

A I would say so, judging from the date of the AJE, yes.

Q So that whether or not you saw Garriock first, Mr. Kurek had passed on the information to delete all this stuff in February?

A That's correct.

Q Do you have any kind of a recollection at all if an explanation was given at that time?

A During all of this period we had been told that the campus marketing section was falling apart. Now, Garriock's final confirmation was during the meeting in April, but it was to the effect that National Student Marketing could no longer perform this work.

Q So it is the same explanation, but you personally

[Page 1001]

jhe 4 Wharton - redirect

received it a little bit later, is that the idea?

A That's correct.

Q You received it in your official capacity though in February when you were supervising this work, is that correct?

A Yes, that's correct.

MR. VELIE: Thank you.

* * * *

[Page 1002]

THE COURT: Once again I am convinced of the desirability of voir dires.

Mr. Velie, it doesn't come out anywhere near what you said it was going to come out. I am not saying this to blame you, but I am just making the observation.

MR. VELIE: Your Honor, I believe that it comes out in every important matter what we intended.

THE COURT: Let me suggest to you that not only is there confusion in the witness' mind, but really Kurek was apparently, from what he now says, the person who made the decision, and I am still at a loss as to what the reason was to do the writing off.

MR. VELIE: I believe this witness has revealed what the reason is and I can --

THE COURT: Now, don't you testify for him, please.

That is embarrassing.

MR. VELIE: I believe he has just told us he knows what the reason is. He is simply unable to tell us to a certainty whether the Garriock meeting is April or February, but he knew the reason throughout the period caused write offs to be made in February.

THE COURT: And you say that is what? You say that is because Garriock pointed out that his division was crumbling and going out of business?

MR. VELIE: That's right, causing the Eastern commitment to fail as well as many others.

THE COURT: All right. Now let me point out something else.

Now that I have heard this witness, and putting aside his confusion, which I consider to be considerable, by the way, I am now marvelling that the defense is objecting to this.

I would think that you would not want to be offering it and the defense would be only happy to hear it.

MR. VELIE: I would like the whole matter to come out before the jury.

THE COURT: That is what my puzzlement is. This

doesn't harm anybody. First of all, as I see it, you weren't offering this against Mr. Scansaroli, who is long gone into

[Page 1004]

jhe 7 Wharton - redirect 1004

into his job for NSMC, right?

MR. VELIE: I am not certain I know what your Honor is saying, I understand what your Honor is saying.

THE COURT: Are you offering this as against Scansaroli?

MR. VELIE: I am offering it to establish that some four months after theproxy was filed the Eastern contract got written off for the reason that was stated.

THE COURT: I understand that.

MR. VELIE: I don't claim that Mr. Scansaroli was there or wrote it off, that's true.

THE COURT: But you still want it in the case as against both him and Mr. Natelli?

MR. VELIE: I believe that it proves circumstantially that it had the same infirmity four months before.

THE COURT: Now we at least know.

MR. VELIE: Right.

THE COURT: Would you mind telling me what this really does to advance your theory. It seems to suggest

that for reasons which came up as a result of the problems of the campus division, which nobody has testified were apparent in October or August of 1969, that somehow Natelli and Scansaroli and everybody else should have foreseen all this.

TESTIMONY OF ROBERT C. BALL

[Page 1145]

ROBERT C. BALL, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR VELIE:

Q Mr. Ball, how are you employed, sir?

A I am an accountant employed by Commercial Office furniture in Washington, D. C.

[Page 1146]

jhe Ball - direct

Q Mr. Ball, I should remind you to keep your voice up and to speak slowly in this room.

Voices do not carry well at all.

Were you previously an employee of National Student Marketing Corporation?

A Yes, I was.

Q During what periods?

A From November 1968 until May of 1970.

Q During that time did you have occasion to serve

as a revenue accountant?

A Yes, I did.

Q What were your duties as a revenue accountant for National Student Marketing?

A To administer the contracts for marketing programs and to maintain the books and records on those contracts.

Q You maintained NSMC books and records with respect to contracts, is that correct?

A That's correct.

Q Does this include what we have been calling in this room fixed fee contracts on unbilled accounts receivables?

A Yes, it does.

Q Did those records break out the contracts by client and commitment separately?

A Yes.

[Page 1147]

jhe Ball - direct 1147

Q Did those records indicate when National Student Marketing spent something on a client, did you find or did you enter something in your records if National Student Marketing spent something on a client?

A Yes, I would make an entry for each contract for the cost expended.

Q Would you make an entry each time National Student

Marketing send a bill to a client?

A Yes.

Q Mr. Ball, did there come a time when you learned that Eastern Airlines had made a commitment for approximately $800,000 for National Student Marketing's services?

A Yes.

Q When did you first learn that?

A It was approximately August of '69.

Q How did you learn about this?

A I was given a program package for Eastern Airlines along with a commitment letter from Eastern.

Q I should you Government's Exhibit 18 in evidence and ask you if you can identify that for us?

A Yes. This is the commitment letter that was accompanying the program package I received.

Q That is, of course, the $800,000 Eastern commitment letter, is that correct?

[Page 1148]

jhe Ball - direct

A That's correct.

Q Government's Exhibit 18, 820,000, dated August 14, 1969.

I show you the portion of Natelli's Exhibit J. in evidence which is a Xerox identified as an Eastern Air-

lines program, starting at page 2267 and so on, and ask you if that is the package you were talking about?

A Yes, it is.

[Page 1149]

gawe Ball - direct 1149

Q In the past several business days, Mr. Ball, have you had occasion to examine your old records from

National Student Marketing Corporation?

A Yes.

Q Did you look to see if you could find in the period beginning with the beginning of 1968 and all the way up through October of 1969 -- did you look to see if you could find any record of National Student Marketing spending anything on that Eastern program?

A Yes, I did review that and there were no indications of any cost on the program.

Q According to your records, National Student Marketing did not spend anything to implement that program, is that correct?

A That's correct.

Q Did you examine your records to see if National Student Marketing ever sent Eastern Airlines a bill during that period regarding that program you have before you in Natelli's Exhibit J?

A Yes, I did. There were no records of billings.

Q Apart from your records, do you have a recollection of ever billing or expensing, I believe is the term, recording something that was spent recording something that was billed with respect to an Eastern Airlines contract?

[Page 1150]

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A No, I have no recollection of that.

Q That is your best recollection, that you did not?

A That's correct.

TESTIMONY OF ANTHONY M. NATELLI

[Page 1913]

Q When did you first hear of any large commitment from Eastern Airlines, as best you can recall?

A I have a vague recollection that I heard about it

[Page 1914]

sometime in August of 1969. I believe that I may have heard about it from Cort Randall during conversations in which I was expressing to him my conclusion that the Pontiac agreement or Pontiac letter was not adequate for recording on the companies books, and I believe at some point he may have mentioned that there was an Eastern contract which they expected to be receiving within days at that time.

Q Where did this conversation take place, as best you can recall it?

A I have a vague recollection it was mentioned to me by Mr. Randall during some telephone conversations in August.

Q Can you fix this conversation with relation to the time that you went to the printers in August?

A It would have been right prior to that occasion.

* * * *

[Page 2052]

Q Do you recall making a note that evening that "To go and replace the GI contract with this" -- you meant the Eastern contract -- "would be really weird"? Do you recall that?

A I wouldn't have recalled it if I didn't have a document to refresh my memory with.

Q It would have been really weird,wouldn't it?

A Excuse me?

Q wouldhave been really weird, wouldn't it?

A In the context of which that comment was written, that is what I thought at the time,yes, sir.

Q You also wrote yourself a note that says "Wasn't booked" -- you meant Eastern wasn't booked, right --"obviously we are going back and doing something not intended"? Did you write that note?

A It is my handwriting. Obviously that is what I was thinking and that is why I wrote it down for inclusion in the work papers.

[page 2200]

Let's talk about the Eastern commitment, Pontiac commitment. You heard testimony from Day One that Mr. Natelli had insisted the Pontiac commitment wasn't what he wanted. You have also heard testimony from Mr. Natelli that was prior to the time he got to the printer that the Eastern commitment was raised with him. You will remember that it was on August 7, a week before they went to the printer, that Mr. Kurek reported to Mr. Randall that Mr. Natelli was taking a tough position on this Pontiac thing and it was a problem. So obviously -- Mr. Kurek didn't copy this memo to Mr. Natelli. But obviously within that week Mr. Randall had time to think about this Eastern commitment, to bring it to the attention of Mr. Natelli.

Let's remember one thing. The Government says to you that there was fraud involved in the booking of this Eastern commitment. You heard his Honor say that Mr. Randall pleaded guilty, Mr. Bushnell has pleaded guilty, Mr. Kelly has pleaded guilty. You heard Mr. Kurek testify after his plea of guilty he had 12 days to spend with the government.

If there's something false or fraudulent about these commitments, those contracts, and these defendants

[page 2201]

gawa 2

knew it, were with Randall, Kelly, Bushnell?

Now about Graham, the man whose signature appears on the Pontiac contract? How about Mullen? I'm not here to

prove anything. The government is here to prove beyond a reasonable doubt to your satisfaction that Mr. Natelli knew these contracts were false or fraudulent. Not one word of testimony from the people who were involved in these contracts.

MR. VELIE: Your Honor, I have to object at this point. You did make a ruling with respect to a Government's offer of proof in this area. I believe this is an unfair comment by Mr. Martin in regard to what he knows about that ruling.

THE COURT: I think you both agree I did make a ruling.

MR. MARTIN: Not on this subject, your Honor. Not on these witnesses.

THE COURT: Since I dont't understand the comment, I will say no more than that.

MR. MARTIN: I'm talking about these people whose names appear on all of these documents. Remember one other thing, a portion I intended to quote. Time is running short. Schauer testified that White, Weld made a study for the Interstate people. He testified that there was a discussion with White, Weld about the fact that they had contacted

[page 2202]

gawa

Pontiac and this was a commitment that Pontiac was going through with. There's no evidence there was anything wrong with either of these, nor is there evidence that Mr. Natelli simply said there's a letter, fine let's book it. You reviewed Exhibit J, which is the program, Mr. Kelly brought.

Mr. Buck's testimony is exactly the same as Mr. Kelly's. Mr. Natelli said at the printer, I want time to look at this. The decision was not made at the printer, it was made the following week. Mr. Natelli went all through the report, the program, made notes on it, went through the time records, made a decision.

Exhibit 21, which you will hear about I'm sure, tis is the handwritte. sheets that has one of the comments to go and replace Eastern with Pontiac, in Mr. Natelli's handwriting right in the Peat, Marwick work papers.

He told you that that was prepared at the time when Mr. Randall was trying to convince him that he should not force the company to reprint the proxy, simply take the documentation from one, substitute it for the other. Don't adjust the numbers, don't go through a reprinting.

The last item on that page refers to the expense that would be involved in the reprinting of the proxy. That clearly indicates that that was the subject under consideration when that was prepared. That was something Mr. Natelli

[page 2203]

gawa 4

rejected. He accepted the Eastern contract only after reviewing it, forcing the Pontiac numbers to come out, so the figures had to change whether you put in Eastern or not. Forced it out, reviewed the situation and maybe he thought he took too hard a pos cion with Pontiac. Nobody suggested that wasn't a valid commitment, but he looked at the Eastern

thing, looked at a letter saying -- signed by a representative of Eastern Airlines saying this is a commitment we have.

He looked at the time sheets, made a good-faith honest decision.

I will take five minutes and I will be finished.

[Page 2264]

MR. VELIE: Thank you, your Honor.

May it please the Court, Mr. Light, ladies and gentlemen of the jury:

Yesterday for just about a full court session you heard a tremendous performance by two highly-skilled, aggressive criminal defense lawyers, possibly two of the best criminal defense lawyers in the city, and no doubt you had to admire the way that they spoke to you, spoke to you about this case. I did too. The fact is that what you heard yesterday was speeches.

You have taken an oath to decide this case on the evidence and not on speeches. I will just give you an example of why that is terribly important. Speeches can raise smoke screens, false issues which cloud what

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it is you are supposed to be thinking about, what it is that you are going to have to decide with respect to this case. A perfect smoke screen was one that you heard about at length yesterday I believe from Mr. Martin. He was trying to

tell you how Peat, Marwick & Mitchell had been very tough on National Student Marketing, so tough, in fact, it wouldn't let them have earnings when they wanted earnings,and so on, so tough that in May and in July the finance committee of National Student Marketing met and said, "Maybe we ought to fire the auditors, they are not acting aggressive enough."

What does that prove after all? Just think about it. The fact is National Student Marketing was a company in a lot of trouble. They had been juggling the books, as you have seen. They had been performing frauds on everybody. They had not real sales earnings. They needed aggressive accounting and when it came to the pitch they got it because after the May meeting and after the July meeting these two defendants went to bat for that company and put out that fraudulent proxy statement, pulled them out of a hole, allowed them to acquire four more companies. So that is what that proves. You should be very careful when you listen to lawyers' speeches that you are not fooled by listening to something that they say, that they have pulled out of context, given you the wrong date, maybe misled you. That is what

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smoke screens are.

I could stand here and clear away smoke screens,

field half truths, for another three hours, just answering everything that they said. But I am going to trust your judgment to pay attention to the evidence and to the fundamental issue in this case.

Now, it is important to do that because I think you have probably seen that the defense approach in this case, like the defense approach in just about any case that a juror would see, would be something like this: You have watched here for three or four weeks now as the evidence came in and you have probably learned a lot about the rules of evidence while you sat here, only one witness at a time, only one question at a time, one answer at a time, one document at a time.

The case gets built up brick by brick just like a building. What the defendants are saying here, this is a brick, that is no building, here is a little brick, that is no building. They are pulling out little bricks and keeping you from focusing on what the case is really about.

I have a suggestion for you and I hope you will accept it. When you go to work on this case a couple of hours from now and go do your important work of trying to decide this case, I want you to adopt this approach.

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Try to keep your eye nn the ball, what the real issue is inthis case, because what the issue is, what this case is all about, is what these defendants knew in contrast, in complete contrast, to what they said in that fraudulent proxy statement.

Remember, the proxy statement was prepared late in the proof, finally prepared in August and September, and it was filed in late September, and by that time the proof in this case is that these defendants knew that that company was a loser.

When I say a loser, I mean a loser, because the undisputed proof in the case shows that without all the fancy accounting for unbilled accounts receivable which you found out was fraudulent in this case, without unbilled accounts receivable there is this tremendous loss, with unbilled accounts receivable they are able to show a gain.

We don't have a chart to show you the same thing for the May period, which is the later period. This is for the year ended 1968. There is another accounting period in the case, a period that ended in May of 1969. But we have Mr. Dingwall's testimony and it is uncontradicted. Without unbilled accounts receivable, even in May of 1969, even though they had gobbled up all those new companies, they still had a loss if they didn't have trhese phony unbi

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accounts receivables on the books. This company was a thorough going loser. The defendants knew it and they didn't tell anybody.

Point Number 1.

Point Number 2, the defendants knew by the time they prepared the proxy statement that the company was not only a loser but the company was in the business of defrauding people, acquiring companies when they didn't have any earnings, and they knew this, as you could see, because the defendants saw them doing it too. They were juggling the books. Not once, not twice, but three different times. They would pump the earnings of a period that had already ended by all of a sudden coming up with these unbilled accounts receivable and saying, "Well, let's count that as earnings for the period two months ago."

They did in 1968, $1.7 million. They did it again with the Pontiac commitment, $1.2 million in sales They did it for the third time with the help of these defendants at the Pandick Press at three o'clock in the morning when it is time to put out a proxy statement an tell people what the company had earned and they are printing it up.

All of a sudden there is a hole in the earnings because Pontiac has been written off.

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Magically, magically, up comes this Eastern Airlines contract.

It is supposed to be for a period ended two months before. Nobody ever heard of it.

They just plugged that right in.

They knew that this company was juggling the books.

They knew it and they didn't tell anybody. They hid the truth.

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That's what the case is about. If you approach the fundamental issus in this way, keep your eye on the evidence, keep your eye on this issue, you should have no difficulty with the case. Perhaps you will recall that I told you in the opening fundamentally this is a simple case, and it is. There has been a lot of proof. That doesn't meant that it is a complicated case. There have been some complicated explanations by the defendants, but that doesn't make it a complicated case. The case is as simple as this: These people knew that that company was no good and they went and told the people who were going to rely on those statements something completely different, something completely false.

Chronologically the proof in the case is really a very simple story also, because you will remember Peat, Marwick and Mitchell and with them Natelli and Scansaroli come on the scene in August and September of 1968.

The first thing they set out to do is to audit the company. During the course of the audit it becomes obvious that the company is going to have a loss. You don't have to take my word for it. Government's Exhibit 1, Mr. Kurek prepared a schedule, the evidence shows that it is dated On October 2, Government's Exhibit 1 in evidence.

The schedule shows that all the way in October, after the year had ended in August, the company and its own

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jhe 2

records was going to show a loss. No secret to the defendants because in their own work papers, in Government's Exhibit 4C, there are trial balances identified here by Mr. Oberlander and Mr. Johnston. I don't have to show them to you. You will have all these for yourself. Those trial balances show that before anybody heard of these unbilled accounts receivables there was a good size loss in that company.

Well, half way through the audit, in October, after the loss like the company is going to have a loss, out of nowhere, out of thin air, $1.7 million of so called sales. And it is not just the fact that they come up late. To be sure, sometimes there are going to be post period adjustments. But these things just came out of nowhere. Nobody had ever heard of them. There wasn't a record anywhere indicating that the company had spent one red cent doing the business that the company said it had back there in August, not a single record, not a contract having anything to do with August.

There weren't any records whatever, and in fact they didn't even have any binding contracts to represent these so-called sales.

And again, you don't have to take my word for it. It is expressed in Government's Exhibit 3. Mr. Scansaroli

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jhe 3

noted on or about October 26, when he dated this page, "Under this method extra caution should be used because there is no legal binding contract."

Again, Mr. Scansaroli in the grand jury testified in the grand jury, and you will recall that it was read and that it was read to him, the situation was touch and go, the salesmen might lose the business, the salesmen might lose the business because the advertisers might send it someplace else.

All of this in October, in October, two months after the year had ended. Mr. Scansaroli knew that there were no sales, no sales at all, the situation was touch and go.

Again, in Government's Exhibit 7, a meeting in December, Mr. Natelli says by August 31, 1969, that is, by next year, he is saying to the company, he wants all contracts or commitments to be firm enough to confirm in writing. It is right here in this exhibit. What that means is he knew that the 1968 contracts were not firm enough, you couldn't confirm them in writing, they might just evaporate, they might lose the business. That's what he knew. That's what the documents show.

Again, Government's Exhibit 16. In June Mr. Natelli is speaking. You don't have to take my word for it

jhs 4

or Bernard Kurek's word for it. There is a transcript of the conversation these men had. It is a partial transcript, but there was a secretary taking it down, doing the best she could.

In this exhibit Mr. Natelli repeatedly complains "$3.2 million of unbilled accounts receivable are sitting unbilled. You can't collect them, you can't sue on them. I doubt if you have a case."

There is simply no question back there when it was happening the defendants took an awful risk without disclosing that they were doing this to anybody in booking these so-called sales when there were no contracts, no documents, an understanding, a clear understanding on their part that the salesmen hadn't even gotten the business.

So clear an understanding, in fact, that it is reflected in the work papers in Exhibit 4C, which I believe I have here, a note from Mr. Natelli to Mr. Scansaroli and an answer, "Can you find out if the salesmen are even entitled to their commissions." Answer, "No they are not."

The salesmen aren't even entitled to their commissions. What kind of sales are these after all?

Well, Mr. Stillman made a wonderful argument to you yesterday. He said people make a mistake. That doesn't mean that they are going to go commit a Federal crime after that.

jhe 5

You can evaluate that argument for yourself. But evaluate this mistake for yourself, because this wasn't just a simple mistake. This was complete and utter indifference to doing an honest job of reporting what that company had done in 1968, complete and utter indifference to being professional about their work.

It was so outrageous, in fact, to call these things, these so-called commitments, sales and earnings that Mr. Scansaroli when he testified before you here, changed his story, went back on his oath, changed a version that he had previously given under oath and denied that the situation was touch and go and tried to tell you that he thought that they were binding, despite all these documents and despite all his prior testimony. That is how powerful this mistake was, and the way he still views it.

He can't, you may find, see his way clear to telling you the truth about it.

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And Mr. Natelli, who was supposed to be supervising all this, what's he tell you about? He didn't bother to read the work papers which are just about this thing, maybe 30, 40 pages. He would have found out all these things. He tells us he didn't look. He tells us he didn't ask Mr. Scansaroli. He tells us Mr. Scansaroli didn't tell him these things. He didn't know.

Well, the proof shows that in Government's Exhibit 7 and Government's Exhibit 16, Mr. Natelli knew. That's in Government's Exhibit 3, where he should have known if he didn't; picked up the document and found out for himself.

Now, this was a company, Peat, Marwick and Mitchell Company, which knew how to do an audit. You have seen some evidence here of how an audit ought to be done; the audit, for example, by Mr. Johnston in 1969 after the prosy had been prepared. Mr. Johnston confirmed every singl contract, he confirmed every one of them in writing, and he kept direct control and, this is critical, direct control.

Mr. Johnston was so careful that when he mailed out the confirmations to the people he was trying to get confirmations from, the clients of National Student Marketing, he wouldn't even let anybody mail them. He kept control of the mailings. He got them back in self-addressed mailers.

gawa

He kept proper records of what he had done.

In complete contrast, what did Mr. Scansaroli do? When he got on the telephone to check with people, he say he was going to confirm these commitments. He doesn't even know who he was talking to. Apparently he didn't even pick up the phone and ask who am I talking to? What connection do you have with National Student Marketing? How in the world can you tell me anything about these confirmations that I'm seeking?

Because incredibly that man picked up the phone and talked to the printing shop and says that he thought he was talking to the advertising agency. He didn't record in his work papers the names of the telephone numbers thathe called. He let the salesmen dial the telephone for him. He simply assumed without checking that the earnings that he was recording for 1968 had been earned back in 1968. He did nothing to check, despite the fact that the only records of these things were hastily prepared forms, all of them dated October 17 and 18.

He didn't even look for a written proposal to the Clairol Company as some evidence that National Student Marketing had done something for Clairol, and you remember that's a half a million dollars of sales and earnings that h went and put into the books two months after the year had

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ended and he didn't so much as lookfor the written proposal. He didn't check with Arthur Andersen, the prior auditors. He didn't check with Michael Sullivan, the accountant who was a recently as the month before had been working on these books.

He put into his papers something which he says is a contract evidencing $138,000 worth of sales for 1968. It is the Syntex letter commitment.

It must be apparent to you he didn't read it. That thing is dated in October. It speaks about a proposal made in October. This is two months after the year ended and it is not a commitment for anybody to do anything. It doesn't require National Student Marketing to perform any services. It doesn't promise National Student Marketing one red penny. It doesn't mention any money amount at all.

In any event, it has a money back guarantee in it. Yet he includes this as $138.000 of 1968's earnings.

So what I understand of a mistake is this? Look for an analogy. Look for anotherprofession, say a doctor. If a doctor diagnosed a patient with kind of an indifference to finding out what kind of disease the patient had and then prescribed drugs for him, powerful drugs, and then the patient died, that doctor would have a problem and he would know it. He would be afraid he might lose his certificate.

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That's really what we have here because here, to keep with that analogy, the patient died. Within a period of months o the $1.7 million that these guys pumped into National Studen Marketing after the fact, changed that loss that they had in a gain of the $1.7 million, within months a million dollars was written off as worthless. That's not all.

They knew that the balance could not be collected. In fact, they knew that there were real problems with many o them.

May I have chart 15, please?

You look at Chart 15, just this portion of the chart now. You will see that on May 22 Joseph Scansaroli wrote down in the work papers all of these contracts, all of these amounts and knew that they would never be collected That's on May 22, right at the very same time that he knew an additional million dollars was being written off.

Only two weeks after May 22 when all of this bad news hit home with a crash, a million dollar write off, the other contracts no good, no collections on any of the others within weeks after that, two weeks afterward, Mr. Natelli has a conversation with Mr. Kurek. It is in Government's Exhibi 14. Mr. Kurek testified about it.

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The matter was so important to him that he sat down on that very day and wrote a memorandum to Mr. Randall. This is important because this thing was written on June 3, 1969, the day that that conversation was had. There was no lawsuit then. There was no investigation then.

Mr. Kurek had no motive at all to do anything other than to tell Mr. Randall that terribly important thing that happened that day that Tony Natelli told him, Kurek: The accountants are scared, they know these contracts make or break the company, they know these contracts aren't being performed, they are afraid that if something goes wrong they are going to lose their certificates and their careers are at stake. It is right here in this exhibit.

You send for it. You read it. You will find it.

Incredibly as you may find, Mr. Natelli somehow or other can't remember ever saying these things to Mr. Kurek. Fortunately Mr. Kurek wrote it down so we don't have to worry about Mr. Natelli's denial.

Mr.Scansaroli equally incredibly you may find denied that he -- denied flatly and repeatedly that he ever said any such thing to anybody. It must be obvious to you

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who Mr. Natelli is talking about, the accountants under him. The accountant under him was Joseph Scansaroli. Joseph Scansaroli is the person who audited personally all these $1.7 million contracts which are turning out to be utterly worthless just months later.

It is obvious who Natelli is talking about. Scansaroli denies he ever said any such thing.

Even Mr. Natelli had to acknowledge that Mr. Scansaroli said it not once, not once, but repeatedly and he said it when the Ron Michaels contracts, the million dollars of contracts, were being written off, right in this May period. That is when Mr.Scansaroli was saying it despite the fact that he denies it here.

Well, the result of this motive, this fear that they were going to lose their certificates gave rise to the criminal non-disclosures in this proxy statement which we are talking about in this case. Again, pleasse bear in mind what they knew in contrast with what they said.

There is no doubt at all that Mr.Scansaroli knew that a million dollars of contracts were written off because if you were to look in Government Exhibit 15, which is the proxy binder, you will find -- Mr.Scansaroli identified them for us -- his own handwriting, Mr. Oberlander

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identified it as well -- Scansaroli's handwriting actually writing off $750,000 of the $1 million.

He pasted into his book or stapled into his book in other places the balance of that million dollar writeoff, all in this little period in May. So Mr. Scansaroli is wrapped up in these documents. He knew a million dollars had been written off. Mr. Natelli knew it as well.

Government Exhibit 16, which I have already had reference to, right here, it is the meeting of June 9, 1969. Mr. Natelli's meeting with Mr. Randall. In that meeting Randall tells him approximately a million dollars of contracts have been written off. Here is a transcript of the meeting. You send for it. You read it. You will see it for yourself.

Mr. Natelli acknowledges that he knows a million dollars had been written off. He says he knows the balance are uncollectible. He knows what the problems are.

This is on June 9, 1969, right here in this transcript.

Once again, Mr. Natelli somehow or other can't recall the things he said that day. We have a transcript. The stenographer took it down. She had no motive to deceive anybody. She did the best she could to write down the

gab-4

important things that were said that day.

Well, the proxy statement is Government Exhibit 25.

It has in it a passage about 1968 earnings. 1968 earnings appear in the earnings statement. They are also broken out especially for people to read about in a footnote. The footnote we are talking about is the footnote which is charged as being false in Paragraph 3 of the statement.

With respect to this proxy statement, these defendants knew what the proxy statement was for. It is a proxy statement so National Student Marketing can acquire an additional four companies, Mr.Frommer's company, the Mar-Clay Company, a company called Mailbag, and the insurance company, Interstate. That is all this proxy is about

2B

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Tk 3A

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They are going to go out, show people what their earnings are, and then acquire those companies in exchange for National Student Marketing stock, and Mr. Natelli and Mr.Scansaroli know Mr.Frommer and these other people are going to read these statements and they are going to rely on them, and Mr. Frommer and these other people are going to think that this is true.

Look what they say. They report the earnings as originally reported for 1968, approximately $5 million, and not a whisper anywhere of what they know, we proved that they knew, over $1 million of 1968 sales originally reported had been written off as worthless.

Instead what these defendants did rather than disclose it in any way was they buried it. They took every penny of loss resulting from that $1 million writeoff, all the sales that had been written off, all the earnings that had been written off, and they tucked them away where nobody would ever find them.

Three-quarters of a million dollars of National Student Marketing's losses were subtracted from the pooled companies' line.

And you remember what that is. National Studen Marketing lost the money. Then they went out and bought some other companies and what has happened here is these

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defendants have -ubtracted the losses from companies that never lost the money and not from National Student Marketing. The result is nobody will ever find out, nobody will ever find out, the $1 million has in fact been written off.

In short, what the defendants did was they doctored the books. You can find that they went actually to great lengths to deceive here.

This chart you have seen several times in the proof. This chart has been shown several times in the proof and the interesting thing about it is that it shows just what a thorough going job of covering up was done here, because after Mr. Scansaroli, as you may find, subtracted $678,000 from the work papers from the pooled companies' line, leaving this as a false and only partially true footnote, Mr. Natelli, with thorough-going carefulness takes the remaining $21,000, the last little blotch or spot and wipes it up, subtracts it from the pooled companies himself personally. They really went to great lengths.

Now, I have said that it was Mr. Natelli that you may find who did the subtraction of the $678,000, and here is why. Not only was Mr.Scansaroli responsible for those figures, as his grand jury testimony and the proof by Mr. Buck and Mr. Johnston showed, but we actually have a schedule in which the line, the pooled companies' line,

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is made up.

Here in the 1968 foot note are each of the pooled companies in a column and the material that was in fact subtracted from the pooled companies instead of from National Student Marketing. This is the work paper. You can send for it. You will find it at Page 2530 of Exhibit 13. It is Mr.Scansaroli's work paper.

Now, Mr. Natelli wasn't very shy about this in the grand jury. He said it probably, as you heard his grand jury testimony read, it was probably Mr.Scansaroli or possibly somebody else.

You consider this and you will know who did it. It is obvious that it was Mr. Natelli polished off the job himself, subtracting every last item from those pooled companies' lines, and he had to know that Mr. Scansaroli had subtracted the first part or he wouldn't have done what he did.

Now, you have heard a lot of talk here, especially from Mr. Martin, about professional judgments. Sure, professional people like accountants make judgments every day, and it is not every time that they make a mistake that they get blamed or they are scared.

A good example of that is when a doctor has a patient and the patient dies. You don't go and prosecute

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the doctor just because his patient died.

But it is quite another matter if you catch that doctor at three o'clock in the morning down in his cellar burying a fresh corpse. That is something else.

The Government suggests that the burial of those losses is exactly analogous and that is what these people have been caught doing.

Just think about it. You can sit there in the jury room and think from night until tomorrow morning and see if you can come up with any innocent explanation for subtracting one company's losses from another company knowingly without disclosing what you have done. In fact, the Government submits there is no innocent explanatic

You heard Mr. Buck testifythat there is no warrant in accounting, that it is improper to subtract one company's losses from another company. Your common sense tells you the same thing.

The defense called at least seven, by my count, at least seven accountants, including two from universities Joe Scansaroli's old teacher and the gentleman from Howard University. Not one of them had one kind word tosay for the practice of subtracting one company's losses from another company.

There is no excuse for that.

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They had to know that it was wrong.

They do give an excuse, however, saying that there was a tax credit.

You are entitled to find that explanation incredible, phony.

First of all, the defendants can't even get their stories together about this tax credit. Mr. Scansaroli told the SEC that when the tax credit was discovered as an offset to the writeoffs back there in May of 1969, when they discovered that they had made a mistake in the taxes, it was time to come up withthe new tax credit, he tells the SEC under oath that he and Mr. Natelli computed it, and he says there are work papers, only he can't find them.

Now from the witness stand he tells you no, he didn't do it, Mr. Natelli didn't do it. He suggests in part maybe nobody did it, and there are no work papers, and then he tells you that maybe Carol Raimondo did it.

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If you remember Miss Raimondo's testimony it is clear on this point. She didn't do it. Page 1389 -- this is Mr. Martin questioning.

"Q Did you and Mr. Scansaroli come to in those discussions, a conclusion to that question?

"A Well, I can't say that I can recall this ever coming to a conclusion per se."

The matter is put absolutely clear on the cross examination, page 1396. I asked her:

"Q Did you actually sit down and compute what the new deferred tax number should be for them, is that the work you did?

A I don't have any memory of every having done that."

Mr. Natelli tells you something just a little bit different from each of those stores. He tells you that there are work papers only now he can't find them.

Well, what about this tax credit. Perfect timing. It comes up at exactly the right time to absorb every single penny of the write offs that theywere then making, just the right amount. And when the SEC gets suspicious and begins to inquire all of a sudden, it turns out there is no tax credit in that amount after all, it turns out to be a mistake.

jhe 2

Even if there were a tax credit, it is no excuse for what they have done here. Mr. Natelli had to acknowledge as he did yesterday, that you don't restate prior years figures for immaterial amounts, and this is a prior year restatement beyond any doubt, the $1 million, the $748,000 taken off the prior year's statement.

And he had to acknowledge that APB no. 9 says that when you make a prior period adjustment you must disclose it. There was no disclosure here.

Your common sense again will tell you why that accounting rule is so. Suppose you wanted to go out and buy a share of National Student Marketing stock and you see something that says earnings, such and such an amount. Don't you want to know that those earnings were made up of the company's sales, of the way it does its business? Wouldn't you be interested in knowing if there were no sales after all but that behind the scenes somebody had taken out the sales, switched it for a tax gimmick, a tax credit arising out of losses? You would be interested in knowing it, wouldn't you?

The next excuse you get is that Mr. Natelli somehow or other cleared this matter with Mr. Otkiss. The Government submits that Mr. Natelli deceived Mr. Otkiss or doubled talked him in some way. Mr. Otkiss if he saw any-

jha 3

thing, say the footnote which appears over here on the left, and in this footnote even Mr. Natelli had to acknowledge - there is a mistake. Almost $700,000 of National Student Marketing's losses are subtracted from the pooled companies line and you can't tell that there has been a $700,000 write off. Instead the only disclosure that Mr. Otkiss gets to see in this footnote is $70,000 with a $21,000 decrease in earnings. No wonder Mr. Otkiss was confused. Mr. Natelli never told Mr. Otkiss that he proposed to subtract three-quarters of a million dollars of National Student Marketing sales from the pooled companies, for the obvious reason. If he did Otkiss, as you may find, would say "You can't do that."

Mr. Natelli told Mr. Otkiss that the problem here of the unbilled accounts receivables was just one instant, this one fellow Michaels who had done something unethical.

But, it wasn't just Michaels. Mr. Natelli knew at that point, as he had said in June in a transcript which we have here, "You can't collect all $3.3 million of unbilled accounts receivables. I don't think you have a case. You can't sue on these things. The whole volume of 1969 business is sitting there unbilled. You have written off $1 million."

Mr. Natelli tells all these things to Mr. Randall. He tells none of them to Mr. Otkiss. He tells nothing at

jhe 4

any time to Mr. Otkiss of the juggling of the books by this company three different times when they came up with earnings to improve the loss for periods which had already ended.

You are entitled to find that Mr. Natelli double-talked or deceived Mr. Otkiss in some way.

The clear example of that is Mr. Otkiss gets up here and says Natelli told him one thing about the Pontiac contract. Natelli said he just wouldn't let it on the books Mr. Natelli tells you that he told Otkiss something quite differently, that he told him the truth of the thing, that it had been on the books and he told him to write it off. Mr. Otkiss apparently was not told the truth of the matter.

Now, these subtractions from the pooled companies instead of from the company that lost it, National Student Marketing, this failure to disclose, this phony tax credit, this is really, you may find, unique accounting, accounting designed to do only one thing, and that is to hide the fact that all those contracts had been written off and were turning out worthless. No doubt that the accounting was unusual.

You heard a lot about Mr. Buck yesterday from both defense counsel. Somehow or other both defense counsel forgot to tell you what Mr. Buck said about the write off

jhe 5

against the deferred tax done by Mr. Scansaroli. He said in his twelve years as a certified public accountant he had never seen anything like it before or since. It was unique and it had one purpose and one design only, to hide the truth of the matter here.

You will be instructed on the law when I am finished by Judge Tyler and the law is plain. When accountants deviate from accounting rules, when they break the rules to do something, it is powerful evidence that they intended to deceive.

3b

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You are going to be furnished a copy of the indictment when you go into the jury room. Count 2 appears in several paragraphs. Paragraph 3 specifically charges in this case that the footnote which I have been showing you is false.

It charges that a million dollars, 20 per cent of 1968 sales, had been written off and these defendants didn't say anything about it. You have seen the proof as to that. They knew it and they didn't tell. It is exactly what paragraph 3 charges.

Paragraph 3 charges in addition that the footnote is false because the pooled companies line is understated, National Student Marketing is overstated. That very simply is a result of thatsubtraction that they had no business doing. They subtracted the loss from the pooled companies and understated them. By doing that they left National Student Marketing overstated.

Paragraph 3 of the indictment is just as clear as it can be. You have seen it proved. Bear in mind again when you go to decide this in the jury room what the charge is and what they knew, contrast it with what they said in that footnote.

Now, there is a separate and a second specification of fraud in the indictment. It is in paragraph 4. Thi

gawe 2

has to do with the period ending May 1969, the nine-month period. With respect to that the indictment charges two things.

The company had announced its earnings as about $700,000 for that period. The indictment charges and the Government submits it is proved that there were no earnings at all for that period and that the defendants knew it and failed to disclose it.

Here the absolutely uncontradicted proof is Mr. Dingwall's calculation, that if you take off all these rotten unbilled accounts receivables, there was a loss for that nine-month period. There was no gain at all.

Paragraph 4 of the indictment also charges that the sales for National Student Marketing for that nine-month period were overstated by about $800,000.

Here I want to show you Government's Exhibit 65-19 again, this chart. This summarizes it for you very neatly.

Bear in mind that the indictment charges that they said sales were about $11 million. In fact, it was under 10 million, 5. In other words, an overstatement by about $800,000. This is the figure we are talking about.

This chart summarizes specific sales known to these defendants to be no good at the time they prepared that proxy. About 300,000 of them were specifically found to be no good

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gawe 3

by Mr. Scansaroli and by Mr. Oberlander who showed his chart to Mr. Scansaroli.

They knew that that $300,000, and the testimony was that Mr. Natelli was aware of Oberlander's work as well. Mr. Oberlander's work is the great bulk of this. He had access to the work papers.

This was an SEC review designed to find out just this, whether these contracts were any good. 300,000 of them specifically found to be no good, and yet included as components of the figures for that May period. The rest of the 800,000 is the Eastern contracts. You can take that down.

If anything has been proved in this case, ladies and gentlemen, the Government submits that you must have been satisfied beyond any doubt that that Eastern contract was known to be a complete phony when it came up.

The fact is this has to be one of the most single events that you will probably ever here about, at 3 o'clock in the morning at the printers plant where they are printing up this very proxy statement, there's going to be a big hole in the earnings because the Pontiac contract has to come out.

By magic 3 o'clock in the morning the first time it is mentioned the Eastern Airlines contract comes up. It

gawe 4
is supposed to be a contract for the period which ended two months before and yet in the two months between May and Augu[s]t nobody seems to have peeped a word out of it to the controller of National Student Marketing or anybody else who had any business with this matter.

These defendants either had to think th[a]t National Student Marketing had gremlins and magic or they were making these things up. Because the same account executive, Dennis Kelly, comes up with this one, came up with the Pontiac one which had to be written off. It is 3 o'clock in the morning. The period had ended. They are printing up the figures.

This was incredibly the third time they knew that the company had pulled this kind of a stunt. The first time of course, is the $1.7 million. They stick it into the 1968 year after the period had ended.

The second time was the time the company took $1.2 million, the Pontiac contract, put it into the six-month figures and now this time, the third time.

4a

[Page 2297]

Tk 4B

gab-1

Well, this is probably a good place to speak to you for a minute about circumstantial evidence.

You are going to be instructed that circumstantial evidence is evidence like any other kind of evidence and you are entitled to rely on it just the way you rely on direct evidence. A simple example will show you it is as good if not better than a lot of direct evidence.

Suppose you are working, doing something in one part of your house and you hear a crash from the kitchen and you go running into the kitchen and there is your three-year old boy and he has got red sticky stuff on his face, he has red sticky stuff on his hands and at his feet is a smashed jam jar with jam all stuck in the broken glass. If he tells you, I didn't knock it over, I didn't touch it, it fell all by itself, that is direct evidence.

But the jam on his face and the jam on his hands tell you what must have really happened, that is circumstantial evidence.

It is just like this case, because the defendants have all kinds of explanations. As you may find, they have jam all over their face. That is what the case is about.

This Eastern switch, the single switching of

gab-2

Eastern for Pontiac, described by Mr. Natelli himself as weird, described by Mr.Scansaroli as strange, not a word of this, of what they know, is breathed to Mr. Prommer who is about to part with his company for National Student Marketing stock.

Not a word of it is breathed in the proxy statement so that the Mar-Clay people and the Mailbag people and the Interstate shareholders, 1300 of them could find out what is really the story with this company.

Just to summarize for you the business of Paragraph 4 of this indictment, the period ended May 1969. These defendants knew these specific sales totaling $840,000 had no business being on that proxy statement.

They let it in.

The second thing they knew was that there were no earnings at all because the whole thing was made up of these unbilled accounts receivable which they knew were worthless.

A simple summary of what they knew over their entire period or history with National Student Marketing will show you this: In the entire period that they had been established as the accountants and auditors for National Student Marketing, $3.3 million of billed accounts

gab-3

receivables had been booked by the company, 61 per cent of them, over $2 million, had been written off as worthless A large amount was knownto be absolutely collectible.

That taken with the ones they knew were no good, they knew that the company had repeatedly juggled the books after the period had ended, shows just what they knew. You contrast it with what they said in the proxy statement.

What is the defense here? The defense in the case is, Number 1, Mr.Kurek was lying.

Just think about Mr.Kurek. He was the first witness here. Perhaps you remember him. You remember his demeanor on the stand. Why don't you contrast his demeanor on the stand with that of the two defendants.

Did you notice that Mr. Kurek when he was asked a question on cross-examination gave an answer? Did you notice that Mr. Kurek when he was on cross-examination readily, candidly gave answers even when he knew that it was something the defense wanted emphasis?

He gave away points if he thought that that is what the truth of the matter was.

Mr. Kurek you may find was a thoroughly candid man. He was doing his best, you may find, to tell you the truth.

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gab-4

He didn't change his story. He didn't go back on his oath.

The evidence was, and you saw it, that he had testified in the grand jury and he testified in the SEC.

There reams of documents with which he was cross-examined and he didn't double back on his story or change his oath.

End 4B

Tk 5A

jhb-1

And what was his motive after all. You will remember that Mr. Kurek has pleaded guilty. There is nothing left for Mr. Kurek -- he has pleaded guilty to a count in this case, Count 2 -- there is nothing left for Mr. Kurek to do with respect to the criminal justice system here except the sentence by Judge Tyler. He knows that if he came in here and he didn't give candid and truthful answers Judge Tyler is going to let him have it, but good. That man's motive, the Government submits, was to tell you everything just the way it happened.

In addition, the Government submits that Kurek was fully and completely corroborated. When he told you that the unbilled accounts receivables were booked late, they came up for the first time in 1968, in October, two months after the year had ended, you don't have to take his word for it alone. You have Oberlander and Johnston and their work papers that prove it.

When he tells you that there were losses without these contracts, again with it, you don't have to take his word for it alone. You have his schedule, Government Exhibit 1, which I have already shown you. You have Scansaroli's work paper in which he says there is going to be a loss without these contracts.

jhb-2

You have the trial balances of Peat, Marwick, Mitchell to prove it. You have Mr. Dingwall's calculations in the chart which I showed you just a moment ago. Mr. Kurek is fully corroborated on all of these points.

When Mr. Kurek tells you about the meeting of December 9th at which Mr. Natelli says "Next year, fellows, these things will have to be firm enough to confirm in writing," you don't have to just take Mr.Kurek's word for it. There is a memorandum written the very next day for the purpose of telling all the account executives what happened at that meeting.

When it was written there was no lawsuit going on, he had no motive to falsify. He wrote down what he thought was important about that meeting and it corroborates what he says.

When he tells you about the June 3rd meeting at which Mr. Natelli said the accountants fear losing their certificates if anything were to happen, there is Government Exhibit 14, Mr. Kurek's memorandum of the very same day which he wrote to Mr.Randall to put Mr. Randall onnotice of these terribly important facts.

And when Mr. Kurek tells you about that important meeting of June 9 at which Mr. Natelli says "I know that the $1 million were written off," in effect, and he says,

jhb-3

"I know that the rest of them, $3.3 million, are uncollectible, you will never collect them," when Mr. Kurek tells you those things, there is a transcript of the meeting made by a secretary just as things were being said. It is Government Exhibit 16.

You heard a lot of insinuation yesterday inthe arguments by defense counsel. You heard insinuation that Bernard Kurek made up his story in whole or in part to please the Government or in conjunction with the Government.

If you believe that for one minute don't even stay in thejury room. Just come on out and acquit, if you think that Bernard Kurek did anything like that.

What is the next line of defense? The comfort letter. Bear in mind that every time an honest accountant at Peat, Marwick & Mitchell gets his hands on the bad news in those work papers things start to happen. Mr. Oberlander when he did his review got so excited that he called Mr. Kurek up at home on a Saturday to tell him about it.

Then what happens? He gives it to Scansaroli, his review, and Scansaroli and Kurek squelch it and it never gets disclosed.

The same thing with the comfort letter, in part, because Mr. Colona and Mr.Johnston get their hands on the books and the records and they start finding things.

jhb-4

They find about $800,000 worth of adjustments. After they find them, after they take a definite position that disclosures have to be made, they call Mr. Natelli at home, where he is sick. They are so excited about it they go and call Mr. Natelli at home.

Well, keep in mind about this comfort letter that it does not tell the whole story by any manner of means. The comfort letter only speaks about certain adjustments. It speaks about certain deferred costs, it speaks about certain capitalized costs, and it speaks about a tiny portion -- I shouldn't say tiny portion -- it speaks about $300,000 of unbilled accounts receivables, tiny compared with the $1 million that Mr. Natelli and Mr. Scansaroli knew were written off in that very same period.

So when Mr. Natelli finds out that they are going to do a comfort letter does he pipe up with the additional information, "Maybe we ought to tell them that they wrote off a million dollars in that very same period, switched it in the dark of night for another one, came up with another one at three o'clock in the morning?"

Oh, no, he doesn't pipe up with that information. He knows that his firm is trying to decide to inform the SEC or not.

You heard Mr.Earle testify. Mr.Earle is a

[Page 2305]

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lawyer for Peat, Marwick & Mitchell. He had to rely on what the accountants told him were the true facts about that comfort letter, and Mr.Natelli didn't tell him the whole story. Instead, as Mr. Natelli had to acknowledge, he and Mr.Scansaroli had a pow-wow and then they go back and report or Mr. Natelli goes back and reports to his superiors at Peat, Marwick & Mitchell "These adjustments are just the result of an honest mistake by the compan

You are entitled to find on the evidence in this case that Mr. Natelli and Mr.Scansaroli set out to deceive their very own company, Peat, Marwick & Mitchell, as well as the shareholders and people who were going to rely on this proxy statement.

In any event, that comfort letter not only had so little in it but it came too late to save Mr.Frommer from being cheated. It came after Mr.Frommer's deal had closed. It came after the Mar-Clay deal had closed. It came after the Mailbag deal had closed. There is absolutely no defense at all to the fraud which happened to those people.

The next line of defense here is that somehow or other all these things that the defendants knew and they didn't tell anybody about were imm-terial. Now, don't abandon your common sense in a case like this. That is

jhb-6

what jurors are picked for. That is why we take twelve citizens to decide a case like this rather than twelve accountants or scientists or something like that.

You have got your God-given common sense and your experience of everyday affairs. Think about it. You know a lot about National Student Marketing as you sit here today after three weeks of this proof. You know how they juggled the books repeatedly. You know how they wrote on these contracts and wrote them off. You know how they were essentially in the business of trying to acquire other companies, showing them phony sales and earnings that didn't exist and writing them off later after they grabbed up those companies. You know a lot about National Student Marketing. Ask yourselves, would you go and sell your house, your family's business, take the money out of the savings bank, borrow against life insurance, and buy that stock? Ask yourselves if you would do anything like that.

Well, the defendants knew all those things and they didn't warn anybody, and they knew people were relying on this. Mr. Frommer in fact did go out and sell his business for National Student Marketing stock because they never warned him. He read that proxy statement. He felt he was entitled to rely that he was being told the truth. You may find that he got cheated.

jhe 1

The defendants have told you it didn't matter about the 1968 write offs because in 1969 the company was a bigger company. Just ask yourselves whether the defendants aren't trying to pull the same fraud on you that was pulled on Mr. Frommer and on the others, because what the company had been doing was showing phony earnings, acquiring other companies which had real earnings, growing by that system, writing off the phony earnings, and doing it again and doing it again, repeatedly. That is a single argument because what it boils down to is that fraud is okay as long as it succeeds.

But nobody told Mr. Frommer and nobody told the early acquisitionees that this had happened to them. They might have been interested. They might have wanted to get their companies back. They were never told.

In addition, the argument that the company is bigger in 1969 just falls of its own weight, because the uncontradicted evidencein this case as big as that company had gotten, with all the companies that it had gobbled up, it still reported or would have reported a loss if you had taken off all these phony unbilled accounts receivables.

Mr. Natelli himself, in the privacy of a meeting with Mr. Randall on June 9, acknowledged the terrible importance of the fact that these things weren't collectible, and it is here in the transcript, Government's Exhibit 16.

jha 2

Mr. Natelli said it doesn't matter if you have $45 million or some such number, in sales. It is important that there is $3.3 million of uncollectible unbilled accounts receivables on the books. And it was. He knew it. He knew it and he never told anybody.

I want to remind you again about the defense summations because the defendants in their summations or the defense lawyers in their summations, made some pretty snappy arguments. But those arguments to be good arguments have to be based on evidence, and if you listen carefully to what they were saying what these lawyers were doing was giving you back the stories told by the defendants from the stand, and those arguments are no better and no worse than the credibility of the defendants when they took the stand, took an oath and testified here.

Ask yourselves -- you sat here for three weeks -- ask yourselves, didyou see any witnesses in the case except those defendants bob and weave, change directions, change field like a broken field runner, do anything, as you may find, except give a straight answer to a straight question.

Ask yourselves that.

You saw them with your own eyes. You watched their demeanor when they testified. Ask yourself about Mr. Scansaroli's credibility.

jhe 3

Mr. Stillman stood here yesterday and told you that Mr. Scansaroli represented a breath of fresh air in this case. Well, maybe he forgot or maybe he thought or hoped that you would forget that Mr. Scansaroli is the man that came up here and repeatedly changed evidence that he had previously given under oath before to tell a new story for you.

Now, this is the United States Courthouse. It is 1974. You are jurors with common sense. You don't have to take arguments like that. You can reject them if you don't believe the testimony on which they are based.

You remember the witness and I think you will remember how he changed his story. Mr. Scansaroli told the SEC in 1971 under oath and he told the grand jury in 1973 under oath that he understood that the situation with those 1968 contracts was touch and go, his words, touch and go.

In other words, he knew that the company didn't have those sales, that they might evaporate at any time, that the company could lose the business, there were no earnings, there were no sales. He knew that.

That's so terribly important here in this criminal trial that he got up there on the stand and told you that somehow or other that sworn testimony should be disregarded, you should listen to him today tell you a new story.

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jhe 4

And you will recall that Mr. Scansaroli got up there and tried to explain this business of the tax credi we have been talking about, the tax credit which is the excuse for not disclosing some of the write off. What Mr. Scansaroli told the SEC under oath is that when it was time to recompute the tax credit and they discovered this tax credit and they were going to do the write offs he told the SEC he and Mr. Natelli were the only ones who got into it, the only ones who did it. There were work papers. They did their computations.

Well, he came in here and he told you something quite different. He told you that he didn't do it, he told you that Mr.Natelli didn't do it, and he tells you now there aren't any work papers because there didn't need to be any.

Ask yourselves if Jose ph Scansaroli's testimony is not utterly inconsistent, at war with the other proof in this case. He tells you that he flatly never told anybody that he was afraid he would lose his certificate. It is inconsistent with Mr. Kurek's sworn testimony, it is inconsistent with the corroborating proof, Government's Exhibit 14, in which Mr. Natelli tells Kurek, "The accountants worki for me are in fear of losing their certificates."

It is inconsistent even with Mr. Natelli's testi-

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jhe 5

mony, who told you once but repeatedly Scansaroli had said he was afraid hewould lose his certificate, words to that affect, repeatedly, he said it at the time of the write offs.

Mr. Scansaroli tells you that he wasn't aware that Pontiac and Eastern were being switched at the Pandick Press.

Well, you evaluate that one on its face, because you will recall that Mr. Scansaroli is the man responsible for getting the figures into the proxy statement. That was his job. And that's what they were doing. Pontiac represented figures that either had to come in or go out and so did Eastern. It seems that everybody in the place was in on the secret except for Mr. Scansaroli. Buck knew it. He wasn't involved in it particularly. But he heard it all going on. Kurek knew it, Natelli knew it. Scansaroli tells you "Oh, I didn't know anything about it." You are entitled to find that a false denial, and you are further entitled, if you believe it a false denial, to consider that false denial important proof that he was denying it because he knew it was criminal.

What about Mr. Natelli's credibility. Bear in mind your own impressions of Mr. Natelli when he testified on cross examination. The Government submits that you are

jha 6

entitled to find from his demeanor on the stand that that man was incapable of giving a single straight-forward truthful answer. Ask yourselves how many times did he just wonder off and have to be told what the question was again. Ask yourselves was he giving you a line of double talk. Ask yourselves was he telling you the truth. Because maybe you noticed and the Government submits that Mr. Natelli has a mathematical memory, a convenient memory. It's hazy on the things that tend to show his guilt and yet it's very firm and positive on the points he wants to make here, even after five years, and even whenit is plainly inconsistent with documents prepared at the very time of the events in questio such as Government's Exhibit 7, about the December 9 meeting Government's Exhibit 16B the June 9 meeting, Government's Exhibit 14, about the June 3 meeting.

Mr. Natelli's testimony, in short, is just completely inconsistent with the rest of the proof. Ask yourselves if any other witnesses in the case behaved in this fashion. Askyourselves did the defendants act as if they were telling the truth.

Look, there were conflicts in the proof. The defendants tell one story. The Government's proof, documentary proof in evidence, tells a completely different story. You are just going to have to decide this case by resolving

[Page 2313]

jhe 7

the conflicts in the proof. Use your common sense. Ask yourselves who has the biggest motive to fabricate, to hide, to cover up and deceive here. Just ask yourselves about that.

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[Page 2314]

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gawa 1

Ask yourselves why the defendants' stories are utterly inconsistant with documentary proof. Documents don't change their story. Once they are prepared, there they are.

The Government contends in short that the defendants set about to bring the cover up right here into this courtroom, right there to the witness chair. The Government submits that they perjured themselves to cover up what it is that they did.

Again, if you find that they give false statements, you are entitled to find that they did so because they knew that they were guilty.

The Government submits, in short, that you can't believe these defendants. If you can't believe them, you must confict them.

Maybe you remember Mr. Stillman's opening. I do. He said something there. When I heard him say it, I said I wish I said that. Mr. Stillman told you the four hallmarks of a cover up which he calls a dirty word. It is word nobody here invented. We need not to worry about personalities or lawyer's contests. He told you the four hallmarks of a cover up.

Number one, a scapegoat; number two, false statements, perjury; number three, missing documents; number

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gawe 2

four, stonewalling. The Government submits we proved all of them.

Who is the scapegoat for the fact that all these contracts disappeared and turned out to be no good at all? Did these accountants own up to the fact that they did a lousy audit? Did they own up to the fact that they had no business booking this stuff for earnings of 1968? They find a scapegoat. Ron Michaels must have done something unethical. He absorbs all the blame for the fact that contracts had to be written off. That's a scapegoat. That's what they have here.

What about false statements and perjury? You have seen the documents in the case, the proxy statement. You are entitled to find that that's utterly false. They knew all of the things that we have proved here and didn't disclose. In fact, they doctored the books by subtracting the company's losses, National Student Marketing's losses, from other companies, false prepared statements.

What about perjury? That one is up to you. You saw the defendants testify. You are entitled to find, if you wish, that they have perjured themselves right here. What about missing documents? There is proof of that, too. There is a work paper for every single computation in this case except for that critical tax credit. As to that the defendant

gawe 3

are all over the lot. First there were papers, now there aren't papers. Mr. Natelli tells you there were papers and he's lost them, missing documents. There it is on a critical point.

The Government contends you will recall that that tax credit is a phony. Wouldn't it be interesting to find out what if any computations were done.

What about stonewalling? It is hard really to say what that term means. Ask yourselves if it means anything. Doesn't it mean the preparation of false documents? Doesn't it meanperjured statements? Doesn't it mean giving an explanation such as the tax credit? When the authorities begin to investigate, such as the SEC, there is no tax credit after all, it was really a mistake. Ask yourselves isn't that stonewalling? Ask yourselves if the Government hasn't proved all of these things?

I hopeyou will bear with me for just a minute or two more because I do want to show you what it is, help you if I can, in the work that you are going to have to undertake when you go to deliberate this afternoon.

The indictment charges two false statements. They are found in paragraph 3 and in paragraph 4 of count 2 of the indictment. You don'thave to memorize any of this. The indictment is going to be sent in to you. The exhibits

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gawe 4

by the way, aregoing to be sent into you. If at any point you can't find a piece of paper you recall having seen, just send out a note. We are here to help you. If you need to find a piece of paper or where in the proxy statement certain things are or aren't, whatever, send out. You are entitled to ask for testimony, you are entitled to send for documents, you are entitled to all the help you feel you need.

The indictment in paragraph 3 focuses on the year ending 1968 and in particular to the footnote we have all been talking about. To sum up, it just tells you that the defendants knew that a million dollars of 1968 sales have been written off.

They knew it but they didn't tell anybody about it. In fact, they buried the loss by subtracting these losses from the pooled companies.

This chart summarizes it. A million dollars written off, nowhere disclosed, three quarters of a million dollars subtracted from the wrong place.

That's what that paragraph is about.

Ask yourselves as you decide with respect to that specification of fraud, they knew it, they didn't say it. They knew people were relying on it, too.

Paragraph 4 of the indictment charges a second

gawe 5

fraudulent financial statement. You are going to be instructed in a moment by Judge Tyler as to what the applicable law is.

I think it is fair to say that if you find the proxy statement false in either regard, you must convict.

The second regard has to do with the period ended May 1969. There the May figures showed $702,000 of earnings. Mr. Dingwall's calculations were that without these phony unbilled accounts receivables there were no earnings at all. The defendants knew it and didn't say it.

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You have the Government charts which show what they knew about the two million being written off, the other ones they knew to be uncollectible. In addition, Paragraph 4 says that the sales were overstated by $800,000. That is summarized neatly for you right here in this chart. It shows when they found it out, where they wrote it down, totals it up for you, $800,000 of phony sales which they let go into those figures.

Now, these defendants are public accountants, certified public accountants. That means, as Mr. Natelli acknowledged on the stand, that the public is entitled to rely on them to give financial statements which are the truth.

The public is entitled to rely on financial statements which are truthful. That is the law. That is the law at issue in this case.

If you look at the proxy statement, Government Exhibit 75, you will see it is a beautiful thing. It is slick printing. Behind that slick printing job, fine layout, behind the cool forbidding certificate of Peat, Marwick, Mitchell & Company, one of the world's largest accounting firms, there are two defendants, Natelli and Scansaroli, right here, pushing the figures around, burying

gab-2

losses in the pooled companies where they had no business doing it.

They knew that the company was a loser. They knew that the company was a fraud. They knew these things and they didn't tell anyone.

At the least, the very least, if accountants know that -- this isn't a technical matter -- if accountants know that the company is a can of worms like that, they have to say something. They can't just put out statements as they did here which show earnings and growth and sales which are utterly fictional.

Now, this is an important case. It is important for the defendants obviously, it is important for the Government to route out corruption and false statements and dishonest practices even when they occur in high places.

Reputation as we have all come to recognize recently is no defense when people have committed crimes.

I want to point up to one other thing about this case. Maybe you remember Mr.Frommer on the stand here, the man who used to have that company, Europe on Five Dollars a Day, put out the books, the travel company. Mr. Martin was cross-examining him. He said, Mr.Frommer, you could have hired accountants, couldn't you? You could have gone in and checked to see if National Student Marketing

gab-3

was okay or whether it was a loser.

Ask yourselves, isn't that a single question? Isn't that a question that says to you disregard the law, it doesn't matter that the law says accountants have to tell the truth. It is every man for himself, we don't need a law. Everybody will have to hire accountants from now on if they want to buy a share of stock or anything else in this country.

Well, we have a law. It protects Mr. Fommer and it protects you and me, and it says that accountants have to tell the truth in financial statements. That law isn't worth a hang, and all the prosecutors and judges and SEC lawyers and accountants, they aren't worth a hang if juries don't do their duty in a case like this one.

The Government leaves it up to you, up to your sense of duty, up to your common sense to stick with the issues in this case, to stick with the evidence, to decide this case according to your oaths, well and truly on the evidence.

We have all watched you as you sat here doing your work over what has been almost four weeks. It has been impressive. You have worked hard to pay attention to what sometimes must have been a little boring, sometimes has been technical or complicated. It is an important case.

gab-4

We were all impressed with the hard work that you have done. Take your jobs seriously, as I am sure you will do. Don't feel overwhelmed. Jurors have sat in chairs like this one, like those for years since this building was built deciding cases just like this one. You don't have to memorize every item of proof, every number in this case. You are entitled to send for the exhibits or the testimony or ask questions of the Judge.

Use your common sense. Keep your eye on the ball. You shouldn't have any problem at all with this case.

You should also know that punishment which a defendant may receive in this court is absolutely none of your concern. Whether Judge Tyler decides to give them a suspended sentence or something else is absolutely on his conscience and has nothing to do with your concern at all.

I am going to ask you in doing your duty to set aside emotion, to set aside misplaced sympathy and focus on this evidence. Focus on the issues in this case. That is your duty, to do it. You have taken an oath. We are all going to trust you to hold to that oath.

Please bear in mind the overwhelming proof as to the motive here, documents whichshow it. Bear in mind the proof as to criminal intent, including the demeanor of

gab-5

these defendants on the stand.

Bear in mind how the Government has shown that subtractions were made from pooled companies and there was absolutely no excuse for doing any such thing, showing an intent to deceive.

Abide by your oath, abide by your common sense, stick with the evidence.

And the Government is confident you will find these defendants guilty as charged.

Thank you.

CHARGE OF THE COURT

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Now, there is a provision in the 1934 Act which reads in relevant part for the purposes of count 2, that is to say, our case, as follows:

"Any person who wilfully and knowingly makes or causes to be made any statement in any document required to be filed under this title or any rule or regulation thereunder, which statement was false and misleading with respect to any material fact, is guilty of a crime."

As I have already stated or at the very least inferred, count 2 is laid basically upon this statutory language which I just read to you.

In practical, simplistic terms, therefore, count 2 charges the defendants with preparing and filing a false and misleading proxy statement in material respects, in violation of the law.

Now, you also I think already understand that count 2 charges that the proxy statement as a whole was not false but that it was false and misleading in two material respects.

First, count 2 charges that the defendants omitted or caused to be omitted disclosure that over $1 mil-

worth of NSMC's 1968 gross sales had been written off and that the defendants had subtracted in the proxy statement figures the greater part of the losses not from the gross

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jhe 2
revenues of NSMC but from the gross revenues and earnings of the so-called pooled companies, that is to say, companies which had been acquired by NSMC before the proxy was filed, thus overstating NSMC's sales and earnings and understating the earnings and sales of the pooled companies.

Second, count 2 charges that the defendants either overstated or caused to be overstated in the proxy statement NSMC sales and earnings for the first nine months of 1969, omitting to disclose that NSMC had no substantial earnings at all during that nine-month period.

Now, I instruct you that if you find that the proxy statement was false in either one of these two respects that is sufficient to support a conviction. Put differently the Government isn't required in order to support a conviction here to prove that both parts or both false and misleading statements, so called, of material facts were such in order to support a conviction.

Mr. As the lawyers have all fairly pointed

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out to you, we have heard a great deal of evidence, there has been a considerable volume of evidence, particularly documentary evidence, in this case. In a sense or in various senses, it could be truly said, as I think the lawyers have, that some of this seems to be complicated. However, it could be said that generally speaking the issue which you

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jhs 3

really have to focus on here can be stated in a relatively simple fashion: Did the defendants or either one of them knowingly and intentionally either prepare and submit material misstatements as to the financial position or financial operations for NSMC for the year of 1968, for which the figures were stated to be audited, or in respect to the figures for NSMC for the first nine months of 1969, which were, as I recall the proxy statement, labeled as unaudited figures.

If you were to determine that in neither one of the two respects alleged the statements were false or misleading, why, then, of course, you would be obliged to acquit both defendants.

On the other hand, if you were to determine that in either or both respects the financial information or data or figures were in fact false and misleading in a material

sense, then you would be obliged to consider whether or not the defendants knowingly participated in making these figures and putting them in the proxy statement to be filed with the SEC, and if you did find that they either knowingly made these misstatements or they caused them to be made or they aided and abetted in their making, then you would be obliged to convict the defendant or defendants for which you make these findings.

[Page 2342]

jhe 4

Now, before I turn to the elements of the offense which the Government must prove beyond a reasonable doubt and then discuss with you the principles of law to be applied to those elements, it might be helpful to you in your deliberations if I were to summarize some of the main contentions of the parties here, then turn to the elements and instructions of law, with the hope that my summation of these contentions will illustrate the principles of law which I will treat and define and explain to you.

* * * *

[Page 2354]

Well, the Government, of course, has quite different contentions. The Government's first contention, in point of time, at least, is that in the months and weeks

following their retainer, that is, PMM retainer, in August 1968 Natelli and Scansaroli were extremely lax and negligent in permitting their client to add about 1.6 or $7 million worth of sales to the results for the fiscal year ending August 31, 1968.

The Government points to the testimony of Kurek, Buck, [illegible]erlander, Johnston and others, and to the exhibits in evidence, to show, as the Government sees it, that these sales first really surfaced so far as Natelli and Scansaroli were concerned in mid-October, that the two men quickly learned or should have learned that they

[Page 2355]

jhb-4

were not legally binding commitments, and that the salesmen on these alleged sales weren't even entitled to commissions, and that the whole picture was one where any accountant of even a minor amount of experience should have known that the contracts were very, very questionable indeed, particularly to the extent of showing a great amount of income on audited returns for a fiscal year.

The Government then goes on to say that the total picture, most particularly the documentary evidence, the work sheets and the like of Peat, Marwick, Mitchell, shows that this was a lax, careless, unprofessional job

of auditing and that as time went on, though it was true that occasionally Natelli and Scansaroli and others would remonstrate about getting written commitments, they got deeper and deeper into trouble because they were lax in their auditing work, and they were particularly lax in clamping down on the management people who were involved in struggling to get these commitments on the books so as to present a rosey financial picture to putative merger partners or companies which might be acquired or bought by NSMC.

The Government points, for example, in this period, to the so-called confirmation procedures, which were oral and telephonic, and the Government argues that they were about as absurd and unprofessional and as poorly

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jmb-5

designed to get at the true facts as anything that could be conceived, particularly by certified public accountants.

The Government argues that the trip of Scansaroli to New York was as futile a venture and trip as could be imagined, that he took the word of these account executives, that he made calls to people that he didn't even know, and that he got information which at best was

inconclusive, assuming it came from persons who really knew what they were talking about in any event.

Therefore, the Government says that what went on in the fall of 1968 in connection with the audit of the '68 fiscal year figures was so lax and so careless and so inconclusive, particularly in respect to these important sources of income, the fixed fee contracts, that it was a very poor job and that what happened in 1969 was almost inevitable to the knowledge of any responsible accountant, that is to say, when they came to the point where they started making write-offs.

[Page 2357]

jhe 1

Now, the Government, as you know, makes the argument here that after the '68 audit was complete, in a very few months, to the knowledge of Natelli and Scansaroli, both NSMC management and, when the Michaels situations at least came along, Natelli and Scansaroli themselves were writing off almost $1 million worth of these receivables for the year 1968 as no good, that is to say, as uncollectible accounts receivable.

The Government argues that during this period at the very latest Scansaroli and Natelli began to be aware that they werein very deep and that their professional lives might be at stake and they began to express concern to various figures in management at NSMC and there were meetings held and conversations over the telephone.

As an illustration of this, you know it has been much bruted about by all counsel in the case, certain documents would show that Scansaroli, at least, expressed concern about losing his license. There has been testimony from Kurek on this subject.

Scansaroli and Natelli say that this never happened at all, or more precisely, as I understand them, they say, well, one or the other of them might have said jokingly that they might lose their license, but it was just a joke and that was it.

[Page 2358]

jhe 2

The Government says this is significant because it was no joke and theyknew it, they knew they were in deep, and they knew that their audit for 1968 was not all correct whatsoever, and that they knew this early in 1969.

Then, says the Government, if they didn't know it earlier, there came a period when the proxy statement was

going to printers at Pandick Press in August of 1969 and with all the write offs and with the knowledge of the Ron Michaels problem there in the early morning hours, I think Mr. Buck said it was about three or four or 5 o'clock, as I recall his evidence, he heard discussions involving Natelli and other management figures or, rather management figures in NSMC, about the Pontiac commitment.

We have heard about the Pontiac commitment throughout this case, and as you recall, there was a great deal of discussion about it that night, and Natelli says that he was upset because despite what he told us about his earlier directions to the client not to include the Pontiac gross figure of some $900,000 in the proxy statement, he learned when he came up to New York to Pandick Press that there it was in the figures, and that he remonstrated with Cole, Randall and others, including Kurek, and got them to remove the figures, as he had earlier asked. But at the same time, as everybody agrees, the Eastern Airlines commitment was put

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jhe 3

into the figures, as the Government would have it, in place of Pontiac.

Now, the Government argues that nobody, nobody, least of all Scansaroli and Natelli, had ever heard of the

Eastern Airlines commitment until the wee hours of mid-August when they were here at Pandick Press, and the Government says that from everything that these two defendants knew about the write offs up to that point, they should have been very skeptical if not downright suspicious about the commitment, but, says the Government, from their evidence they proved from the lips of Mr. Buck, for example, that Natelli didn't bat an eye and in went the Eastern figures.

Therefore, the Government argues that they have shown that at that time Natelli well knew that this was all bogus material and that these entries as alleged in count 2 were woefully misleading in that they made no disclosure of the write offs at all, and worse than that, the write offs were concealed by having them subtracted from the pooled companies revenues and not from the revenues of NSMC, which in very simple terms resulted in the figures showing a profit for 1968 and 1969 for NSMC whereas in fact in 1968 there should have been a loss and in 1969 no appreciable net income at all.

Finally, the Government says with respect to the

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jhe 4

comfort letter "sure, we will concede that Natelli talked to Otkiss, that Natelli talked to Holton, and we will even

concede that at one point or another in October Natelli may have said to Randall and others. Look, we have got to straighten this out in connection with this closing or we may have to go to the SEC," that is to say, they might have to file amended figures with the SEC, and the Government says, "Look, all that was, Natelli knew full well that he and Scansaroli were then in it and that this was designed to throw everybody off the track. Not only the SEC," says the Government, "but Mr. Otkiss and Mr. Holton."

The Government argues, in other words, that Natelli didn't really bring all of the facts and the true facts to Otkiss' attention when he consulted him by phone.

Well, I don't intend to go on and I don't want you to ignore the fact, and it is the fact, that I haven't summarized every argument that able counsel have made for their clients, and I don't intend to. I have hit what I understand to be the high points and these points have been argued early and often by able counsel for each of the defendants and for the United States.

My point is to set a back drop for us because I now intend to turn and discuss with you the essential elements of this offense which the United States must prove beyond a

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jhe 5

reasonable doubt to support a conviction of either or both of the defendants.

The first essential element is that NSMC filed a proxy statement with the SEC which was required by law so to be filed.

Now, I don't understand that there is any significant issue about this element at all. I don't think that you need, therefore, to waste much time on that, which is virtually, as I understand it, conceded.

The second essential element is as follows: The Government must prove beyond that one or both of the matter, or statements made in the proxy statement was false or misleading and materially so. Put differently, that the statements were false or misleading as to a material fact or facts.

The third essential element which the Government must prove beyond a reasonable doubt is that the defendant in question either made or caused to be made the false or misleading statements or one of them.

Fourth, you must be satisfied beyond a reasonable doubt that the defendant in question acted willfully and knowingly.

* * * *

[Page 2362]

I am going to discuss some of the principles of law involved in these essential elements so called and your consideration of these essential elements.

The term or phrase "false and misleading statement" has been discussed. I point out to you that under the law a statement is false, of course, if it is untrue. A statement is misleading if it omits facts which are necessary to portray a true picture of the facts which are relevant. A statement is false or misleading if what is stated conceals or distorts a material fact so that the omission or failure to disclose creates or fosters a misapprehension as to the true state of facts which are relevant.

In this context keep in mind that sometimes a half truth is no better than an outright falsehood. A misleading effect may be created by half truths.

Indeed, a statement, though literally true, can nevertheless be false if it would create a false impression of the true state of affairs when interpreted by those who would read the statement in question.

Now, where a person represents that a particular fact or set of facts exists, but at the same time willfully and knowingly and intentionally fails to reveal other relevant and material facts concerning those representations which are made, and thus would place the state of affairs

gaws 2

in quite a different posture if these additional facts were

known, he may have an obligation to disclose these other material facts so as to avoid deceiving persons who read the statement or statements in question.

To illustrate here, as you know, the Government argues that in respect to the celebrated footnote D, about which you heard so much here, . to the extent that that footnote recites that NSMC's 1968 sales were 4.9 million, it does not disclose that NSMC had written off about a million dollars worth of these sales. Therefore, the Government would say that though part of this is the truth, it is only a half truth and, therefore, it is misleading and false.

Now, on the other side of the coin, as you know, the defendants both argue that this is substantially correct and isn't material in any event, because of other figures and, therefore, it isn't false and misleading as the law understands those terms at all.

In the context of this case I instruct you that a defendant may be found to have acted wilfully and knowingly only if he knew that a portion of the financial statements recited in count 2, such as the footnote or a figure entry, was false and misleading. It is not enough, in other words, merely to establish that a given defendant acted negligently

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gawe 3

or through error or mistake. Although mistakes or negligence may give rise to civil suits, they do not constitute criminal conduct.

A finding of an intention to include false and misleading information of a material nature is required. Good faith, that is to say, an honest belief in the truth of the data set forth in the footnote and entries in the proxy statement, would constitute a complete defense here.

I point out that the prosecution, however, is not required to prove the making of the alleged false or misleading data or the defendants knowing, intentionally participations therein by direct proof, that is to say, by direct eyewitness evidence or the like. These elements of knowledge and intent, in other words, may be proved by circumstantial evidence, that is to say, by such inferences as may naturally and reasonably be drawn from all of the facts and circumstances as shown by the evidence in the case.

* * * *

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Perhaps the critical issue in this case, therefore, can be summarized as follows: Were the quoted earnings figures and footnote set forth in Count 2 fairly set out? That is to say, did they fairly present the reve

and earnings picture for NSMC for the fiscal year 1968 and the first nine months unaudited of fiscal 1969?

If you determine that there is nothing material false or misleading about this information as alleged

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in Count 2, that would end your inquiry and you would be obliged to acquit both defendants.

On the other hand, should you find that the quoted material is substantially inaccurate and misleading in whole or in part, then you would have to turn your attention to each of the defendants to consider what the evidence shows that he did or failed to do and to determine whether or not he participated in a scheme to knowingly and intentionally permit the submission of earnings figures known to be false in a material way to the SEC in the proxy statement.

[lines 13-25 are blank]

[Page 2371]

jhb-1

If you find that such a scheme has been proved and if you determine that there is some evidence that a given defendant participated in this you still have to ascertain, of course, that the prosecution has established beyond a reasonable doubt that the defendant under consideration knowingly and wilfully either put or caused to be put false or misleading material facts into that proxy statement or knowingly and wilfully assisted in this conduct with a realization of what was going on and a desire to participate in this scheme.

If you find that a given defendant participated simply through careless necessity or negligence, with a mistaken but nevertheless honest belief that his participation was correct, truthful and sufficient, then you should acquit that defendant.

If, on the other hand, you find that the defendant in question knew that the false or misleading data of a material kind were being placed in the proxy statement and then knowingly and intentionally did something to assist in this course of action you should find that defendant guilty.

* * * *

[Page 2378]

jhe 1

Now, I believe, before I pass witnesses, that there was an argument or there may have been an argument that the Government didn't produce certain witnesses that they could have produced and should have produced. If you recall that such an argument was made, I point out to you this proposition of law:

If it is particularly within the power of either the prosecution or the defense to produce a witness who would give relevant testimony on an issue in the case, failure to call that witness might create the presumption that his testimony would be unfavorable to such a party. However, no such presumption should be drawn by the jury where the witness is equally available to all parties or where the witness' testimony would be merely cumulative.

Now, the Government would argue in this context that if it is contended that they didn't produce some of the other defendants who you know have pleaded guilty in this case or perhaps other people representing some of these oral contract clients, Eastern Airlines, Pontiac, or what-

ever, the Government would argue to you that those people are just as available to the defendants as they are to the Government and therefore you should bring no such inference to bear against the Government at all.

I point out to you that it is up to you. You can

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jhe 2

either draw such inference or not, as you see fit under the circumstances.

MINUTES OF SENTENCE

[Page 9]

THE COURT: Thank you.

Mr. Anthony Natelli, under the system, as I am sure you know, despite the fact that your lawyer, Mr. Martin, who has been eloquent and steadfast at your side during the trial, and, indeed, for longer, has

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jhrf

spoken for you, you are entitled to speak and say anything you care to at this point. Would you like to say something?

DEFENDANT NATELLI: The only thing I can say, your Honor, is that as I stand before you I must tell you that any decision that I have made in connection with any work that I have done on NSM I made in good faith at the time and never did I do anything that I thought would be harmful to anybody.

Thank you.

THE COURT: All right. May I say the same to you and extend the same invitation to you, Mr. Scansaroli.

DEFENDANT SCANSAROLI: Yes, sir. I have nothing. Mr. Stillman has over the past couple of months said everything that I could possibly think of.

THE COURT: All right, sir.

* * * *

[Page 12]

Not only that, but as I told your lawyers this morning, I think you are absolutely sincere when you say that you do not believe that you did anything wrong in this audit or audits for National Student Marketing. After thinking about the matter for a long time I think you honestly mean that. But the tragedy is that the jury found that this was an audit or audits done with reckless disregard for what was really involved. We know that because of the record showing what it did in the jury deliberation.

I am frank to say that I don't suppose in my experience as a nisi prius judge for almost 13 years that I have probably dealt with any two men who are more generally reputable, and deservedly so, than you are. I understand that. Not only that; you are both, in my opinion, extremely sympathetic figures. I speak as a member of a profession whose shortcomings have been demonstrated most graphically by recent public events that I need not describe in any more detail.

I mention this because I think that the profession of accountancy has failed just as badly as some aspects of the legal profession have failed in understanding their

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jhrf

public responsibility. I have told your lawyers about my views of this matter because as far as I can tell, the only legitimate purposes or objectives of sentencing in your cases are both deterrence general and deterrence special, as Anglo Saxon legal and correctional scholars have formulated those concepts for at least eight centuries.

It would be monstrous for me or anybody else, I suppose, to suggest that we should punish Anthony Natelli and Joseph Scansaroli with a view toward rehabilitating. First of all, your good works are a matter of record and your apparent sincerity, peculiar as it may be to me and others, is a matter almost of record.

In the case of Mr. Natelli in particular, and to a certain extent in the case of Mr. Scansaroli, you have not only had impeccable reputations, but you have profited handsomely by your labors, which have been con-

siderable. The practice of your profession is extremely difficult, tedious, demanding, as your wives know, I am sure.

The tragedy is that two things, without more, in this case I am sure enabled the jury to reach its verdict. One was the work papers which you made. Two was your own testimony on the stand. It has been said that

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jhrf

there were other important witnesses. Perhaps they were important. But in my judgment they were not as important as those two types of proof.

I am afraid that one of the problems this Court faces in imposing sentence is to avoid casting upon your shoulders an opprobrium which is really shared by many, many people in your profession and, indeed, in other professions, including my own, some sort of myopia as to what is really the public responsibility of an accountant who performs services as a public accountant. I seriously doubt that you are any worse than many in your profession, and, indeed, I suspect you are much better than they; certainly as individuals I am almost sure you are.

Your friends, your family, have written very movingly about you. I do not profess to have the wisdom of Solomon. I am well aware on a cool day like this that I don't. I really feel that this is one of the most difficult sentencing problems that I have ever heard of, let alone encountered. I don't mean to apologize or to fob that off on either one of you men. I saw the anguish of your families as the trial unfolded, I saw their anguish and yours when the verdict was reached. It was a difficult day.

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What I have tried to do in fashioning sentence is to make sure that I don't try as an agent or officer of this court to wreak upon you all of general deterrence in its full theory, which would be monstrously unfair to you as otherwise extremely decent, high type citizens. That is a balancing job which I am sure many will disagree with me on, and I can well understand the disagreement when it comes.

Anthony Natelli, please rise.

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GOVERNMENT'S EXHIBIT 12

PONTIAC COMMITMENT LETTER (4/28/69)

PONTIAC MOTOR DIVISION GENERAL MOTORS CORPORATION PONTIAC MICHIGAN 48053

DIRECTOR OF MARKETING

FN000425

April 28, 1969

Mr. Dennis Kelly
National Student Marketing Corporation
Time & Life Building
New York, N.Y. 10020

Dear Mr. Kelly:

This will confirm our recent conversations relative to our plans for use of the services of National Student Marketing Corporation in model year 1970.

You have submitted to us various proposals for directing sales influence toward the student population of the U.S. These proposals in total would require an outlay of approximately $1,900,000.00.

We are now planning to implement student influence proposals that would result in gross billings of $1,200,000.

I will keep you informed as our plans progress.

Best regards,

J. M. Graham

JMG:sn

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GOVERNMENT'S EXHIBIT 18

EASTERN AIRLINES LETTER (8/14/69)

EASTERN AIR LINES INCORPORATED / 10 ROCKEFELLER PLAZA / NEW YORK, N.Y. 10020 / 212-[illegible]

FN000148

August 14, 1969

Mr. Robert C. Bushnell
National Student Marketing Corporation
345 Park Avenue
New York, New York

Dear Bob:

This is to confirm our verbal commitment given to you on May 14, 1969.

We will accept and utilize during the fiscal year, 1970, an amount of not less than $820,000 for National Student Marketing Corporation's services as offered to us in your proposal originally submitted on May 7, 1969.

We look forward to continued success in our youth marketing efforts and to our relationship with National Student Marketing Corporation.

Best regards,

Thomas E. Mullen
Manager-Special Markets

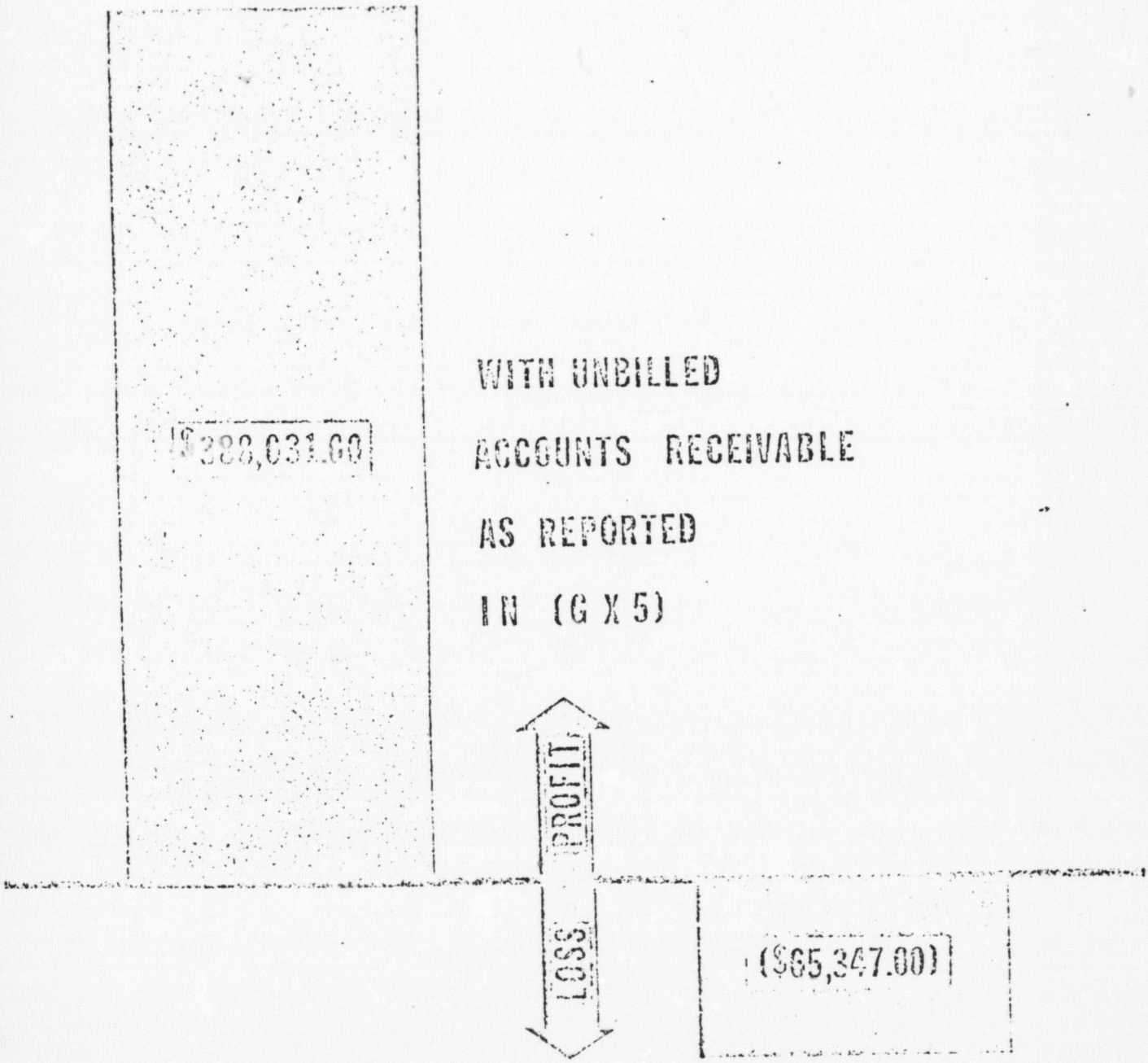
TEM:jls

GOVERNMENT'S EXHIBIT 65-2

CHART

1968

N S M C CONSOLIDATED NET EARNINGS



CHART

STATUS OF 1963

UNBILLED ACCOUNTS RECEIVABLE AS OF JUNE 9, 1969.

SUMMARY OF ENTRIES IN G x 3, 13, 15

$1,740,850.00		100%
	BILLED $223,313.00 (13%)	
1,517,537.00		87%
	INACTIVE $343,661.00 (20%)	
1,173,876.00		67%
	"NO CONTRACT" OR "WRITE OFF" $212,745.00 (12%)	
961,131.00		55%
	WRITTEN OFF $961,131.00 (55%)	

GOVERNMENT'S EXHIBIT 65-14

CHART

STATUS OF 1968 AND 1ST HALF 1969 UNBILLED ACCOUNTS RECEIVABLE SALES AS OF AUGUST 18, 1969. SUMMARY OF ENTRIES IN G x 3, 13, 15

$3,347,775.00 — 100%

BILLED OR BILLED IN PART

$858,274.00 (26%)

$2,489,501.00 — 74%

INACTIVE

$123,006.00 (4%)

$2,366,495.00 — 70%

"BAD" OR "TO BE WRITTEN OFF"

$310,972.00 (9%)

$2,055,523.00 — 61%

WRITTEN OFF

$2,055,523.00 (61%)

NATELLI'S EXHIBIT G

PROGRAM COMMITMENT LETTER

Exhibit A

PROGRAM COMMITMENT LETTER

Date: _____

TO: National Student Marketing Corporation

This is to confirm our verbal commitment to Mr. _____ that sometime during _____ we will utilize
Period: (Month, Season, etc.)
National Student Marketing Corporation to undertake a marketing, promotional, and/or advertising program representing a gross billing to us of approximately $_____.

Sincerely,

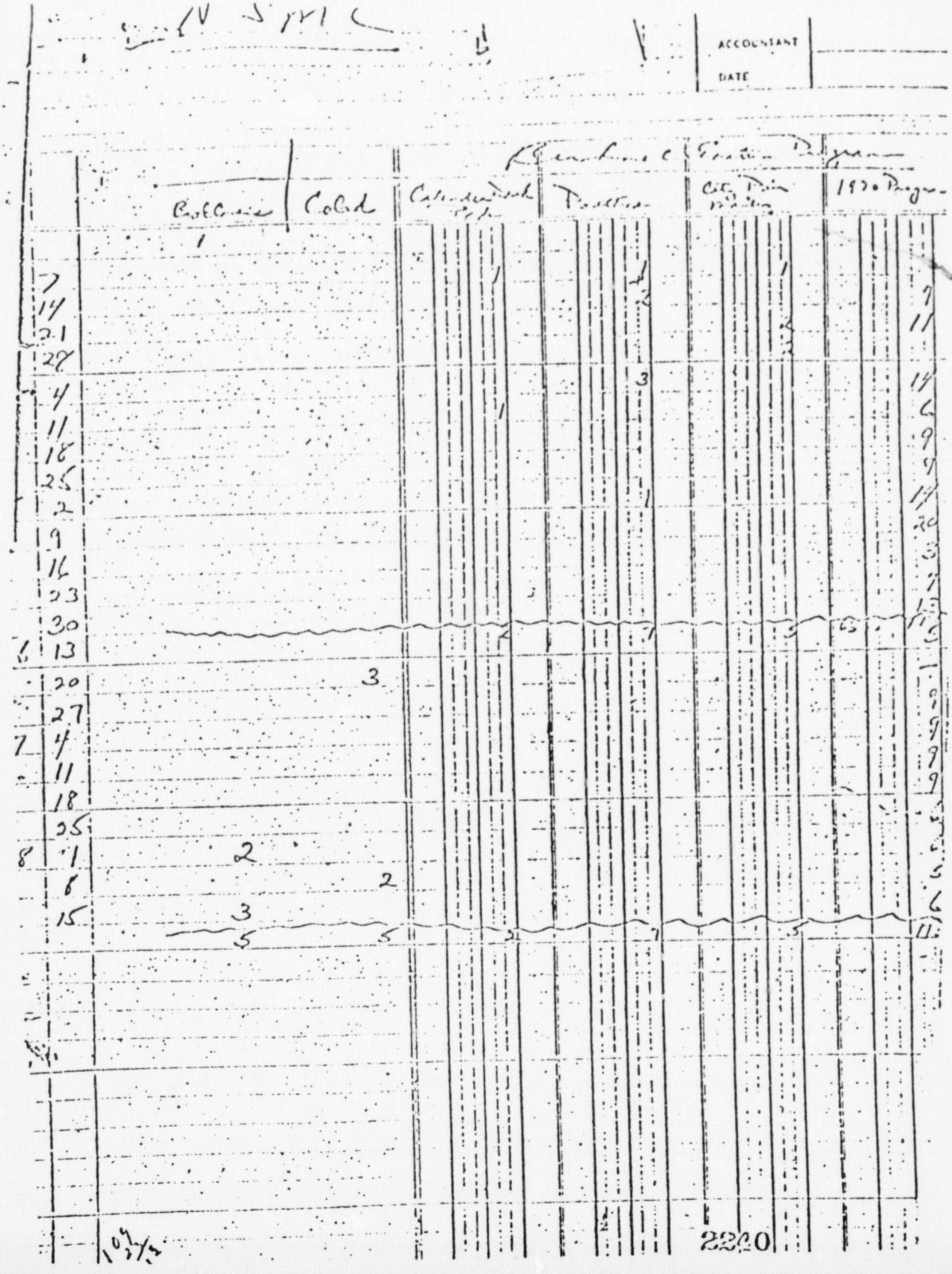
_____
(Authorized Signature)

_____
(Name of Company)

_____
(Address)

NATELLI'S EXHIBIT J

PAPERS FROM WORK PAPERS OF NSMC (INCLUDING BUSHNELL'S TIME RECORDS) (PP. 2243-2281)



EASTERN AIRLINES

YOUTH FARE DATA

ANALYSIS

The attached exhibits, which detail youth fare miles, passengers and revenues by month, indicate the following:

1. Eastern's move to the 2/3 fare reserved seat plan was a good one resulting in an improving ratio of revenues to miles and passengers as a percent of the domestic system.

2. Heavy usage of eastern for summer travel without any real advertising/promotion emphasis against this area.

3. Very low usage of Eastern during the Fall of the year, probably due to a high number of week-end "black out" period.

4. A continually increasing importance of the youth fare program to the Airline.

BEST COPY AVAILABLE

NATIONAL STUDENT MARKETING CORPORATION

Do Not Use | BUSNIELLI | ACCOUNT EXECUTIVES' TIME LOG | WEEK ENDING 6 12 (Month) 6 7 (Day) 7 2 (Year)

A. E. Last Name Only

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	EASTERN		Calendar Desk Pad		1				01	
	EASTERN		Poster			1			01	
	EASTERN		City Pan Mailing					1	01	
	AMERICAN		Poster				2		02	

Natelli's Exhibit J

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NATIONAL STUDENT MARKETING CORPORATION

Branch Office

Russell
A.E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 03 (Month) 24 (Day) 69 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only	PAGE
	EASTERN		Posters		2				02		
	EASTERN		1970 Youth Program	1		3	2	1	07		
	[illegible]		Posters		1				1		

Natelli's Exhibit J

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NATIONAL STUDENT MARKETING CORPORATION

ACCOUNT EXECUTIVES' TIME LOG

A. E. Last Name Only

WEEK ENDING: Month / Day / Year

CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only	
[illegible]		Sky Hook								
[illegible]		Hippo Bumpers								
[illegible]		Mail Co-Operators								

Natelli's Exhibit J

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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING — Month / Day / Year

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	[illegible]		[illegible]							
	[illegible]		[illegible]							
	[illegible]		[illegible]							

Natelli's Exhibit J

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Do Not Use

NATIONAL STUDENT MARKETING CORPORATION

Rosinelli
A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 04 (Month) 04 (Day) 71 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	American		Fall 1969 Program		2	4	3		09	
	Eastern Airlines		Posters	3					02	
	Eastern Airlines		1970 Program		6		2		14	

Natelli's Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

ID No. (Do)

A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING Month Day Year

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only

Natelli's Exhibit J

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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use | Russell (A. E. Last Name Only)

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 12 (Month) / 26 (Day) / 69 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	EASTERN Airlines		1970 Program	2	3		4		09	
	American		Newspaper			1			01	
			Calendar Diskard				2		02	
			City Plan Marking					3	03	

Natelli's Exhibit J

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NATIONAL STUDENT MARKETING CORPORATION

ACCOUNT EXECUTIVES' TIME LOG

Rep No. | Russell (A.E. Last Name Only) | WEEK ENDING Month 12 | Day 25 | Year 69

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	American		C.M. Plan			3			03	
	"		Calendar Desk Pad		1				01	
	"		Posters			2			02	
	Exxon		1970 Program				5	2	07	

Natelli's Exhibit 193

NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING: Month / Day / Year

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only

Natelli's Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

ACCOUNT EXECUTIVES' TIME LOG

Name: _____ (A. E. Last Name Only)

WEEK ENDING: Month 6 / Day 17 / Year 69

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	American		Newspaper		3				03	
	Encl		1970 Plan	2		8	3	2	20	

Natelli's Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

ACCOUNT EXECUTIVES' TIME LOG

Do Not Use: [ ]

A. E. Last Name Only: Natelli

WEEK ENDING: Month 05 Day 16 Year 69

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	Eastern Airlines		1970 Plan	1	2				03	
	Incentive		Calendar Day IL		•			1	01	
			Poster		2		6		07	
			Newspaper			3	1		04	
			City Plan Mailing		2				02	

Natelli's Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING Month Day Year

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only

Natelli's Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

ACCOUNT EXECUTIVE'S

TIME LOG

Accounting Use Only	CLIENT	Billable Y/N	PROGRAM TYPE	Hours by Day M T W T F	Total Hours	Accounting Use Only

Natelli's Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

BUSHNELL
A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 2 3 (Month) 0 6 (Day) 7 2 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use
	American Revue		1970 Program	5		6			11	

Natelli's Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use: _____

BUSINESS — A.E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING: 03 (Month) / 18 (Day) / 69 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	American Airlines		1970 Program			6	4		10	
	"		Hdq & Display	5		1			06	
	"		City Opin			3			03	
	Braniff		1970 Program	1			4		05	

Natelli's Exhibit J

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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING Month Day Year

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only

Natelli's Exhibit J

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NATIONAL STUDENT MARKETING CORPORATION

Butterworth
A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 0 6 (Month) 2 7 (Day) 7 2 (Year)

CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
American		1970 Program	3	1	2	1	1	8	
Systems		1970 Program	2		4	1	2	09	

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Do Not Use

NATIONAL STUDENT MARKETING CORPORATION

RUBINFELD
A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 0 7 (Month) 0 4 (Day) 7 2 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	Eastern Airlines		1970 Program		2	1	6		0 9	
	American		O.A. Plan	2					0 2	
	American		Newspaper			1		2	0 3	

Natellis Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

BARNELL
A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 07 / 11 / 69
Month Day Year

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	Kaiser		1970 Program	4	3		1	4	09	
	Americana		Newspaper			5			05	

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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

RUSSNATELLI
A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 6 7 (Month) 1 8 (Day) 7 1 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	American		Newspaper				1		01	
	American		1970 Program		2	1	3		08	
	Eastern		1970 Program	2	1	2		4	09	

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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

Natelli

A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 3 7 (Month) 2_ (Day) 7 2 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	EASTERN Airlines		1970 Program	1	2		2	4	09	
	American Airlines		1970 Program			4		2	06	
	"		Newspapers			3			02	

Natelli's Exhibit J
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NATIONAL STUDENT MARKETING CORPORATION

No. Name: [ ]

R[illegible]
A. S. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING: Month [ ] Day [ ] Year [ ]

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	Eastern Airlines		1970 Program	1	2		3		06	
	" "		Book Covers			2			02	
	American Airlines		City Plan					1	01	
			Newspapers				3		03	

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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

BUSHNELL

A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 02 (Month) 02 (Day) - 72 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	Eastern Airlines		Coupon Program		2				02	
	" "		1970 Program	1	3		1		05	
	American Airlines		Posters			1			01	
	"		Newspaper				2		02	
	"		City Pass					3	03	

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NATIONAL STUDENT MARKETING CORPORATION

Do Not Use

Rodewell
A. E. Last Name Only

ACCOUNT EXECUTIVES' TIME LOG

WEEK ENDING 6 12 (Month) 1 5 (Day) 6 9 (Year)

Accounting Use Only	CLIENT	Do Not Use	PROGRAM TYPE	Hours by Day M	T	W	T	F	Week Total	Accounting Use Only
	Eastern Airlines		1970 Program		3	1	2		06	
	" "		Book Covers	2				1	05	
	American		Newspaper	1	1	2	1	1	06	
	American		City Plan		2				02	

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9322

SERVING THE YOUTH MARKET

EASTERN AIRLINES

YOUTH MARKETING PLAN 1970

BEST COPY AVAILABLE

Submitted

May 9, 1969

National Student Marketing Corporation

345 Park Avenue • New York, New York 10022 • 758-7700

This recommends a comprehensive program to more profitably position Eastern Airlines in the youth market.

Background

I. The Youth Market

Nearly one-half of the U. S. population is now included in what is generally termed the "youth market". . .the under 24's. Not only is this market large but it is continuing to grow at a rapid pace.

Ages	1965	1970	1975
0 - 13	56,092,000	58,481,000	69,419,000
14 - 19	20,545,000	22,890,000	24,625,000
20 - 24	13,543,000	17,094,000	18,979,000

Out of this immense number of young people emerges the student due to his affluence and influence upon contemporary ethics, politics, culture, and business. The student population, this school year, will be approximately 22.5 million as follows:

	1969/70
High School	15.0 MM
College	7.5 MM

These students will spedn an estimated $35 billion on non-educational items (high school students - $15 MMM; college students - $20 MMM).

In addition to their numbers, affluence and influence, these young people will shortly be the mass consuming adult market of tomorrow.

Now is when they are developing the loyalties to various products and services that they will carry forward into adult life.

II. The Airline Industry

Although it may not have been realized at the time, the first real recognition of the importance of the youth market to the airline industry came on January 28, 1955 when the C.A.B. authorized the sale of unsold seats to youth on a standby basis at less than the normal full fare. The objective of this move was to increase revenues, short term, by cutting down on the number of available, but unsold seats.

This plan, which applied to 12 through 22 year olds, actually provided the airlines with an opportunity to more than cut down on the number of unsold seats. That opportunity was to dramatically expand the air travel market by getting a greater percentage of the U. S. population to fly. Today's youth fare passengers, although an important source of immediate revenues, are the full fare business and pleasure airline users of the not too distant future.

The actual exploitation of the youth fare plan varies greatly from one air carrier to another. Initially, all but Delta used the one-half fare, standby plan. However, Braniff, Continental, National and Northeast have subsequently switched to the two-thirds reserved seat plan.

At the end of April, 1968 Eastern Airlines went to the reserved seat two-thirds fare plan presumably for the purpose of increasing youth fare revenues. Since that time the relationships of youth fare revenues to youth fare passengers and miles flown has consistently improved.

Objective

1. To significantly increase revenues generated by youth fare boardings via:
   (a) increasing the number of boardings and the average trip length.
   (b) increasing school commutation boardings, especially in the Fall.
2. To strengthen Eastern Airlines franchise in the youth market in order to insure a high degree of loyalty as this market matures into the adult, full fare market.

Strategy

To accomplish the above general objective, implement a comprehensive, broadscale marketing program to the youth market. This plan is developed around two specific areas in which Eastern can become preemptive; a youth fare reserved seat vs. standby and the warm weather "fun" destinations served by Eastern.

1. Develop a special college "fun in the sun" travel club for the purpose of flying students to the Miami - Fort Lauderdale area during the Easter break.

2. Aggressively promote school commutation on Eastern Airlines with major emphasis on improved penetration of Eastern's youth fare I.D. card.

3. Capitalize upon the student propensity to use air travel for leisure time activities via strong destination promotion.

Recommended Plan

The proposed marketing plan will be implemented in two overlapping phases. The first phase consists of an aggressive promotion of a college student Easter Vacation Club. The second phase consists of the promotion of Eastern Airlines for school commutation by students plus vacation travel for faculty members.

Phase I

The objective of the Easter Vacation Travel Club is to generate $1,000,000 of found business by transporting 10,000 college students to the Miami - Fort Lauderdale area. Assuming successful execution of this program in 1970, it would be continued and refined in succeeding years.

The basis for the boarding estimate is as follows:

1. There are 25 cities from which Eastern flies to the target destination.

2. There are 300 colleges in which an effective Easter Vacation Travel Club can be established.

3. We feel that a minimum of 30 students per school will become members and will take the trip.

4. We expect 10% - 25% more members from the total program than the basic minimum.

NET:

300 Clubs	x	30 members	=	9,000 Members
plus 10% - 25% more			=	9,900 to 11,250 Members
x average $95 fare each			=	$950,500 - $1,068,750

5. The average fare costs, using the 2/3 reserved fare plan, is estimated at $95.

Natelli's Exhibit J

TRAVEL CLUB PLAN

Timing	Activity	Description	Cost
January	Posters	Promoting Travel Club 15,000 Posters	$17,500
	Desk Pad	Travel Club reminder ad w/application - 500 M circulation	$27,000
February	Handouts	Promoting Travel Club w/application - 15 MM circulation	$47,000
	Posters	Promoting Travel Club 15,000 Posters	$17,500
March	Posters	Promoting Travel Club 15,000 Posters	$17,500
April	Travel Club departs for destination		
Total media cost			$125,500

TRAVEL CLUB COSTS

1970 TRIP

Media	$125,500
Film	60,000
Administration Costs	
Free trip for Reps	30,000
Administration of Club Memberships, ticket arrangements, etc.	60,000
TOTAL	$275,500

* The campus rep will receive a free trip (value $100) for a minimum group of 30 students.. For each person over the minimum he will receive $2.50.

Members of the group will be booked with Eastern on a bi-weekly basis by NSM's District Managers, who supervise the campus reps.

During the January through March period NSM Campus Reps will be promoting the club through the showing of a special destination sell movie which will be produced by youth for youth. The film will look at the Miami - Fort Lauderdale area through the eyes of a college student and will cover the areas of interest to his age group.

Additionally, all application blanks distributed via the above program will go directly to the Campus Rep. He will process them, set up meetings for the Club promoting the destination, plus he will attempt to generate additional memberships himself basically through use of the film.

Why will students want to join? Because the Club offers:

1. a trip to a fun place for college students.
2. the trip will be with his/her friends.
3. the price is very attractive - 2/3 the regular youth fare to the destination.
4. one out of every 30 members will go "free" as the result of a drawing to be held before the planes depart.

5. it's something "special" from an airline that cares about them.

The basic requirement for membership will be a 2/3 fare I. D. card plus $2.00. If they have the I. D. card it is $2.00 only.

The Club will be run in the same manner as any other extracurricular club with the only difference being their objective; an Easter Vacation trip. Officers will be elected and bi-weekly meetings held. This will increase student involvement and will make the club "theirs". A bi-weekly payment plan will be set up and encouraged. All participants in this plan will be eligible for the free trip drawing which will be paid for out of the interest of the clubs payment plan which will be set up with a local bank.

Phase II

This phase will accomplish the following objectives:

1. Provide increased awareness of Eastern as a vacation/business/commutation airlines among:
   (a) faculty; who have a greater propensity to travel than the population average.
   (b) seniors/graduate students; who are making the transition from youth fare to full fare passengers.
   (c) youth fare prospects; who do not have a youth fare I. D. card or who have one but do not use it as often as they could/should.

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ADDITIONAL ACTIVITIES

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Timing	Activity	Description	Cost
February	Faculty Mailing	Promoting Easter Vacation travel w/credit card application - 60 M names	$26,000
April	Posters	Promoting Summer Vacation Travel - 15,000 Posters	$17,500
	Senior/Grad Student Mailing	Promoting job interviewing trips via Eastern plus credit card application 400 M names	$70,400
May	Posters	Promoting Back-to-Home & Summer Vacation Travel 15,000 Posters	$17,500
	City Pair Mailing	Promoting return home/ vacation via Eastern w/I.D. card application 150 M names	$36,000
	Handout	Promoting Back-to-Home Travel 1.5 MM	$47,500
August	City Pair	Promoting return to school via Eastern w/I.D. card application 150 M names	$36,000
	Colad High School Insert	Promoting Eastern Airlines I. D. Card to High School Market 1 MM	$25,500
September	Desk Pad	Eastern I. D. ad w/ local agents' phone number 500 M circulation	$27,000
	Phone Directory	P4C backcover ad plus agents' phone listing - 140 colleges	$18,000
	Occupant Mailing	Promoting I. D. card w/ application - 950 M circulation	$21,400

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Timing	Activity	Description	Cost
September (cont.)	Poster	Promoting Week-end Travel 15,000 Posters	$17,500
	Mini-Pac Handout	Promoting the Youth Fare I. D. Card 1.5 MM	$33,750
October	Handout	Join the Eastern Airlines Travel Program 1.5 MM	$47,500
	Poster	Promote Thanksgiving Travel 15,000 Posters	$17,500
November	Poster	Promote Midterm Travel 15,000 Posters	$17,500
	Handout	Promote Christmas & Mid-term Travel 1.5 MM	$47,500
December	City Pair	Promoting Back-to-Home Travel 150,000	$36,000

Next Steps

Assuming agreement to the Travel Club program, we will undertake immediately to produce the movie which will be the basic selling tool for the campus rep.

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Natelli's Exhibit J

CALENDAR OUTLINE
EASTERN AIRLINES
1970 PROGRAM

Timing	Program	Description	
January	Poster	Promoting Mid-Term Easter Vacation Travel 15,000 Posters	$17,500
	Calendar Desk Pad	Promoting - Easter Vacation Travel 500,000 Pads	$27,000
February	Posters	Promoting Easter Vacation Travel. 15,000 Posters	$17,500
	Handouts	Promoting Florida Vacation in Florida 1,500,000	$47,500
	Faculty Mailing	Promoting Easter Vacation Travel W/Credit Card Application - Mailed To 60,000 Department Heads with 30 Applications In Each Mailing	$26,000
March	Posters	Promoting Easter Vacation Travel 15,000 Posters	$17,500
April	Posters	Promoting Summer Vacation Travel. 15,000 Posters	$17,500
	Senior/Graduate Student Mailing	Promoting Job Interviewing Trips & Summer Vacations Via Eastern W/Credit Card Application 400,000	$70,400
May	Posters	Promoting Back-To-Home & Summer Vacation Travel 15,000 Posters	$17,500
	Handout	Promoting Back-To-Home Travel 1,500,000	$47,500
	City Pair Mailing	Promoting Back-To-Home Travel 150,000	$36,000

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Timing	Program	Description	
August	City Pair Mailing	Promoting Back-To-School Travel 150,000	$36,000
	Colad High School Insert	Promoting Eastern Airlines I. D. Card To High School Market 1,000,000	$22,500
September	Occupant Mailing	Promoting Eastern Airlines I. D. Card To College Market 950,000	$21,400
	College Telephone Directories.	Promoting Two-Thirds Fare & Travel Telephone Listing	$18,000
	Poster	Promoting Week-End Travel 15,000 Posters	$17,500
	Calendar Desk Pad	Promoting Week-End Thanksgiving & Christmas Travel 500,000 Circulation	$27,000
	Mini-Pac Handout	Promoting the Youth Fare I. D. Card 1,500,000	$33,750
October	Handout	Join The Eastern Airlines Travel Program 1,500,000	$47,500
	Poster	Promoting Thanksgiving Travel 15,000 Posters	$17,500
November	Poster	Promoting Midterm Travel 15,000 Posters	$17,500
	Handout	Promoting Christmas & Midterm Travel 1,500,000	$47,500

Timing	Program	Description	
December	City Pair Mailing	Promoting Back-To-Home Travel 150,000	$36,000
Special Project -		Production of 15 minute films plus 200 prints - Movie will feature the excitment of Easter & Summer Vacation Travel with Eastern	$60,000
		Movie Showing, Direct Solicitation and Booking of reservations for Easter Vacation in Florida 300 Campuses - Campus Representative Payment	$90,000
			$150.000
		TOTAL	$834,050

2280

224

Eastern Airlines
Growth and Importance as a
U.S. Domestic System

Month - Year	Miles	% System	Passengers	% System	Revenue	% System
January 1967						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
Total 1967						
January (Jan) 1968						
February						
March						
April						
May						

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Natelli's Exhibit J

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

74 Cr. 43

--against- :

MEMORANDUM AND O

ANTHONY M. NATELLI, :

Defendant. :

----------x

OWEN, District Judge

Before me are two motions by defendant Anthony M. Natelli convicted by a jury in 1974 of preparing false and misleading financial statements in a proxy statement required to be filed with the Securities and Exchange Commission in violation of Title 15, United States Code, §§ 77ff and 78n and Title 18, United States Code, § 2. He was sentenced by Judge Harold R. Tyler to serve 60 days of a one year term, the balance to be served on unsupervised probation, and fined $10,000. This conviction was affirmed on appeal. Natelli now moves for a new trial on the basis of newly discovered evidence pursuant to Rule 33 of the Federal Rules of Criminal Procedure and also for an order reducing the sentence imposed to probation pursuant to Rule 34. Both motions are denied.

I. Motion to Reduce Sentence.

It is clear from reading the sentencing minutes that Judge Tyler agonized over his decision to impose the term of incarceration that he did. The only new factors not considered by Judge Tyler, which Natelli urges upon me is that family tragedies which have occurred since imposition of sentence make it appropriate for me to reduce his sentence. I am aware and distressed that it is often the families who suffer most in these situations. However, nothing which has been presented to me persuades me that Judge Tyler's carefully considered sentence should be disturbed.

II. Motion for a New Trial.

The basis for Natelli's claim that he is entitled to a new trial is prosecutorial "misstatements" during the trial and summation that are allegedly contradicted by testimony of codefendant Cortes Randell, former president of National Student Marketing Corp., given some eleven months later as a witness at the trial of Thomas E. Mullen, the Eastern Airlines executive who wrote the phony commitment letter. This letter, presented by Randell to Natelli as a substitute for the rejected Pontiac "commitment" the night at Pandick Press, was the basis of including the Eastern "commitment" in the proxy statement.

No real contradictions appear, however, since it had been brought out at Natelli's trial both that Natelli had, prior to that night at Pandick Press intimated that the Pontiac "commitment" would not be allowed and further that Natelli had heard about the Eastern "sale" prior to that night. Defendant builds a house of cards which, under sharp scrutiny, falls.

The government does not vouch for everything a witness it calls may volunteer, see Rule 607, Fed.R.Evid., and certainly did not vouch for Randell, whom it considered a hostile witness at the Mullen trial. The government further had no obligation to call Randell or any other witness at the Natelli trial.

All this is immaterial, however, since

> "[i]t must be remembered that 'a defendant seeking a new trial under any theory must satisfy the district court that the material asserted to be newly discovered is in fact such and could not with due diligence have been discovered before or at the latest, at trial.'"

United States v. Stofsky, 527 F.2d 237,244 (2d Cir. 1975), quoting United States v. Costello, 255 F.2d 876, 879 (2d Cir.), cert. denied, 357 U.S. 937 (1958).

Natelli, when he took the stand at his trial, testified that he had told Randell and others prior to the night at Pandick Press that he would not allow the Pontiac

"contract" and also that he had heard about the Eastern proposal sometime "right prior to" the night at Pandick. These two facts, testified to by Natelli and others, are the substance of the "newly discovered evidence." That Randell may have corroborated that testimony does not make the evidence newly discovered. Natelli was present at some of the conversations with Randell. Further, Natelli had the transcripts of the allocutions of Randell's and Kelly's (another codefendant) guilty pleas. Natelli argued on appeal -- this prior to the Mullen trial -- and in his petition for rehearing that the government deliberately chose not to call Randell, whose testimony would have exculpated him. The "evidence" is hardly newly discovered.

While, as was his right, Randell refused to speak with defendants' counsel prior to trial, Natelli was still free to call him as a witness. He could also have interviewed and called other codefendants who had pled guilty. He chose not to as a tactical decision. Natelli has failed to meet his due diligence burden. See United States v. Tramunti, 500 F.2d 1334, 1349 (2d Cir. 1974); United States v. Ruggiero, 472 F.2d 599, 604-05 (2d Cir.), cert. denied, 412 U.S. 939 (1973); United States v. Brawer, 367 F. Supp. 156, 174 (S.D.N.Y. 1973), aff'd, 496 F.2d 703 (2d Cir. 1974).

Natelli's final point is that the government has failed to prove the falsity of the Eastern contract, an essential element of the crime. This point has been argued and rejected as without merit by the trial court, the jury and the Court of Appeals. From a review of the evidence in this area, the argument has not gained merit in the ensuing months.

For the foregoing reasons, defendant's motions are denied.

So Ordered.

October 29, 1976.

United States District Judge

INDICTMENT

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

- v - : INDICTMENT

THOMAS E. MULLEN, : 74 Cr.

Defendant. :

INTRODUCTION

The Grand Jury charges:

1. At all relevant times herein until approximately the end of December, 1969, THOMAS E. MULLEN ("MULLEN"), the defendant, was a marketing executive employed by Eastern Air Lines ("Eastern") in New York, New York.

2. At all relevant times herein, National Student Marketing Corporation ("NSMC") was a corporation with offices in New York, New York, Washington, D. C., and elsewhere, which was engaged in marketing goods and services to young people on college campuses and elsewhere.

3. At all relevant times herein until approximately February, 1970, CORTES W. RANDELL, ("RANDELL"), named as a defendant in Indictment 74 Cr. 43 and named herein as a co-conspirator, was the president and chief executive officer of NSMC and its largest single shareholder.

4. Beginning in approximately February, 1968, DENNIS H. KELLY ("KELLY") (named as a defendant in Indictment 74 Cr. 43 and

named herein as a co-conspirator), having formerly been a marketing executive with Eastern, acted as a sales representative associated with NSMC. From approximately the end of December, 1968 until the end of December, 1969, KELLY was a salaried employee, shareholder, and officer of NSMC.

[page 2]

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[illegible]-497

5. This Introduction is hereby incorporated and realleged in each count of this Indictment as if set forth fully therein.

COUNT ONE

The Grand Jury charges:

6. From in and around September, 1968 up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, THOMAS L. MULLIN, the defendant, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree with RAMSELL and KELLY to commit offenses against the United States and to violate Title 18, United States Code, Section 1952, by the means and in furtherance of the objects hereinafter set forth.

Objects of the Conspiracy

7. The principal objects of the conspiracy were to artificially and corruptly increase and inflate the size of Eastern's actual and purported purchases of NSMC services, in

return for bribes, kickbacks, and other unlawful consideration, and to conceal these facts from the public.

Means by Which the Conspiracy was Carried Out

6. Among the means which MULLAN, RANDALL and KELLY would and did use to carry out the conspiracy were the following:

a) MULLAN repeatedly recommended to Eastern's management that they substantially increase their purchases of MSMC's services.

b) MULLAN stated to the press and public that Eastern was very satisfied with MSMC's performance.

c) MULLAN provided MSMC with documents purporting to confirm that Eastern had committed itself to greatly increased purchases of MSMC services.

d) MULLAN helped RANDALL and KELLY hide from the public the fact that Eastern had neither bound itself to anything nor would in fact utilize anywhere near the amount of

[page 3]

Rinaldo
3-12-86
-497

services MSMC claimed to have sold Eastern, and the further fact that he had received personal payments from RANDALL (without Eastern's knowledge and consent).

e) In consideration of these and other such services rendered by MULLAN, and in response to overtures from

MULLEN, RANDELL and KELLY secretly furnished to MULLEN thousands of shares of MSIC stock and thousands of dollars in cash.

Overt Acts

9. In furtherance of the conspiracy and to effect its objects, THOMAS E. MULLEN, the defendant, did commit the following overt acts, among others, in the Southern District of New York and elsewhere:

a) On or shortly after December 15, 1969, MULLEN carried a certificate for several thousand shares of MSIC stock (a bribe which had previously been delivered to him from RANDELL by KELLY) from his office in New York, New York to his home in Ridgefield, Connecticut.

b) On or about December 31, 1969, MULLEN caused to be incorporated in the State of Delaware (through the use of interstate facilities, including the mails) Back Bay Properties, Inc., a "shell" corporation without any substantial business or assets.

c) On or about January 13, 1970, MULLEN opened checking account number 06-073-729 in the name of Back Bay Properties at Irving Trust Company, New York, New York, in order to funnel a cash bribe through his shell company.

d) On or about January 13, 1970, MULLEN endorsed and deposited to the aforesaid account a further bribe from RANDELL, to wit, a check for $25,000, dated January 13, 1970, made payable to Back Bay Properties Inc., and signed by and

drawn on the account of CONNIE W. HALLL at The Riggs National Bank, Washington, D. C.

c) Within approximately four days after depositing the aforesaid $25,000 check, HULLEN funneled the bulk of it to his personal use by causing $20,000 of the proceeds of said check

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to be transferred to checking account number 06-709-403 at Irving Trust Company, New York, New York, which was a joint personal checking account in the names of THOMAS E. HULLEN and his wife.

Statutory Allegations

10. It was part of the conspiracy that the defendant THOMAS E. HULLEN and his co-conspirators would and did travel in interstate commerce and use facilities in interstate commerce, including the mails, with intent to distribute the proceeds of, and to otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of, an unlawful activity, to wit, bribery in violation of Sections 180.00 and 180.05 of the Penal Law of the State of New York.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

11. On or about January 13, 1970, in the Southern District of New York and elsewhere, THOMAS E. MULLEN, the defendant, together with RAIDELL and KELLY, unlawfully, wilfully and knowingly did travel in interstate commerce and use facilities in interstate commerce, including the mails, with intent to distribute the proceeds of, and to otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of, an unlawful activity, to wit, the giving and receiving of a $25,000 bribe pay-off in violation of Sections 180.00 and 180.05 of the Penal Law of the State of New York.

(Title 18, United States Code, Sections 1952 and 2.)

Foreman

PAUL J. CURRAN
United States Attorney

EXCERPTS FROM TRIAL TESTIMONY

Government's Opening Statement

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THE COURT: Mr. Vizcarrondo, you may make an opening statement for the government.

MR. VIZCARRONDO: Thank you, your Honor.

May it please the Court, Mr. Kilsheimer, Mr. Kaplan, ladies and gentlemen of the jury:

This is a case about bribery, bribery by sophisticated men in sophisticated ways for sophisticated purposes.

The men, Cortes Randell, who was then president of a large corporation named National Student Marketing Corporation, Dennis Kelly, a vice-president of that same corporation, and the defendant, Thomas Mullen, who was then an executive for Eastern Airlines.

The way in which the bribe was passed was not a simple and blunt payoff. It was not a situation where one person says to another person, "Here's some money. Do this for me."

No, as I said, these were sophisticated men; men who knew the dangers of being too obvious, too open in their corruption. So, instead, the bribe took the form

of a secret transfer of stock from Randell to Mullen and later the cash-in of that stock for Mullen by Randell in

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the form of a phony investment by Randell in a phony company that Mullen had set up.

The purpose for which the bribe was passed was twofold. First, for Randell and Kelly, Eastern Airlines was an important client to National Student Marketing Corporation and this gave them a friend at Eastern Airlines, a friend that would and did do favors for National Student Marketing, Randell and Kelly, when National Student Marketing needed the favors.

For the moment, it gave him shares of stock then worth thousands of dollars and later thousands of dollars in cash.

Now, as Judge Brieant has told you, my name is Paul Vizcarrondo. I am an Assistant United States Attorney and I will be prosecuting this case for the government.

I use the word "prosecutor" because this is a criminal case. It is a very serious matter.

It is a case that when you were sworn in as jurors you swore to try truly and fairly on the basis of the evidence presented to you during this trial, but

what I say to you in my opening statement is not evidence. What Mr. Kilsheimer may say to you is not evidence.

The only evidence in this case, the only evidence on which you are to decide this case is the

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testimony of witnesses who sit and testify to you from that witness stand and documents and other exhibits that are entered into evidence.

But because this evidence will come to you in bits and pieces, what I can do in this opening statement is give you an outline and provide you with a sort of roadmap so that as this evidence is related to you, you can put the pieces together.

Now, National Student Marketing was a company that sold its own products and the products of other companies to what was called the student market, high school and college students. It was founded by Cortes Randell, whom I have previously mentioned to you.

National Student Marketing began selling its stock to the public in 1968. It reported to the public that it was earning profits and the price of the stock was rising when the market began to rise. One of the clients of National Student Marketing, one of the companies which National Student Marketing provided services and

from which National Student Marketing received income, received profits that it was reporting to the public, was Eastern Airlines, and the person at Eastern Airlines who was responsible for National Student Marketing's business was Thomas Mullen.

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Now, National Student Marketing's fiscal year began on September 1st and ended on August 31st the following year. In other words, on August 31st of each year National Student Marketing reported its earnings, reported its financial condition to the public as of that year, as of August 31, 1969 and the year preceding, excuse me, August 31st of the year for the year preceding.

For 1968 National Student Marketing reported profits to the public and the stock began to rise. After that Cortes Randell, the president of National Student Marketing, began giving predictions that the company's profits and would report in the following year would triple.

The market price of the stock continued to rise and National Student Marketing, Cortes Randell, began buying other companies, outside companies, and adding them to National Student Marketing and the way that he would pay, the way that the company would pay for these outside

companies by National Student Marketing was usually and substantially in large part by paying the owners of these companies National Student Marketing's own stock.

In August of 1969 National Student Marketing's accountants, the firm of Peat, Marwick & Mitchell, were preparing a financial statement that would show National

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Student Marketing's financial condition as of May 31, 1969. That was called a nine-month or three-quarter year statement because it showed the financial condition of the company three-quarters into the year that was to end on August 31, 1969.

This nine-month financial statement, this financial statement as of May 31, 1969, was to be reported to National Student Marketing shareholders in a statement that National Student Marketing was giving to the shareholders when it was asking the shareholders for its votes for certain actions that the company, that Randell and the board of directors, wanted to do.

This nine-month financial statement was also shown to the public and it was also to be shown to various companies that National Student Marketing was then in the process of negotiating to buy.

The statement was supposed to show that for

the first nine months of the year, as of May 31, 1969, National Student Marketing had made profits of about $700,000 However, just before that statement was finally prepared by the accountants, the accountants told Randell and told the company that they would have to disallow a contract that National Student Marketing had previously submitted to them as income, a contract with Pontiac Motor Company that

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in fact, Randell and Kelly had faked; that Randell and Kelly hadmanufactured to show to the accountants and to make the accountants believe that National Student Marketing was to receive a substantial amount of income from Pontiac Motor Division.

But these fake documents that Randell had given the accountants, even they were not good enough because the accountants felt that they did not constitute a firm enough contract.

The accountants told Randell that they would have to strike out the income from Pontiac from this nine-month financial statement that they were preparing and this would have knocked out about two-thirds of the income that National Student Marketing was going to report to the public.

Randell was desparate to replace this income. So he went to Dennis Kelly and told him the problem and Kelly told Randell that in May of 1969 National Student Marketing had presented to Thomas Mullen at Eastern Airlines a proposal for a program that National Student Marketing proposed to do for Eastern Airlines in the year 1970 and which would cost Eastern Airlines over $800,000 if Eastern Airlines accepted it.

Kelly told Randell that Mullen had stated that

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he wanted to do it, but at that time there was no contract. There was no commitment from Eastern Airlines to accept this program to spend this money with National Student Marketing in the coming year.

In fact, Mullen had no authority to commit Eastern Airlines to spend this amount of money in the coming year, but the timing of this proposal was ripe for Randell's and Kelly's purposes because the proposal had been made to Eastern Airlines in May of 1969 and if it had been accepted then, it would have been income that National Student Marketing had obtained before May 31, 1969, the date of the nine-month statement.

Also, the amount of the proposal was ripe

because the amount of the profit that National Student Marketing would have earned, if Eastern Airlines had accepted the program, would have been enough to offset the Pontiac contract that National Student Marketing's accountants had disallowed.

So Randell told Kelly to go to Mullen and seek a commitment letter from him for Eastern Airlines to spend $800,000 with National Student Marketing in 1970.

Kelly went and in short order came back, came back with a letter from Mullen committing Eastern as of May 14, 1969 to do $820,000 worth of business with National

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Student Marketing in 1970, a letter that Mullen had no authority to send.

In return for this letter, in return for this little favor that Mullen had done for Randell and Kelly, Randell signed a separate side letter that stated that this so-called contract, that this commitment from Eastern Airlines could be cancelled by the end of the year on thirty days notice and this side letter was sent back to Mullen.

The letter that Mullen had given to National Student Marketing committing Eastern Airlines to do $820,000 worth of business was then given by Randell and Kelly to the accountants.

The accountants accepted it and when the May 31, 1969 financial statement was issued, National Student Marketing reported earnings of $700,000.

A few weeks after that Kelly came to Randell and told him Mullen needs some money. Can you give him some shares in National Student Marketing stock?

Randell, not one to forget someone who does him a favor said sure. He took one of his certificates of stock for several thousand shares of National Student Marketing stock then worth thousands of dollars and endorsed the back of it and gave it to Dennis Kelly to

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give to Mullen.

In this way thousands of shares of National Student Marketing stock worth thousands of dollars were funneled to Thomas Mullen whilehe was employed at Eastern Airlines.

Mullen's favor to National Student Marketing didn't end there.

In October of 1969 National Student Marketing's accountants were preparing still another financial statement. This was the year end statement. This was the statement that was to show the company's financial condition after a whole year which had ended August 31, 1969.

In preparing this statement the accountants sent a letter to Mullen at Eastern Airlines asking him to confirm that Eastern Airlines had a contract with National Student Marketing to do $834,000 worth of business with National Student Marketing in 1970.

Mullen sent back a letter to the accountants confirming this.

When the August 31, 1969 year end financial statement was prepared, it included this contract with Eastern Airlines. Again, this letter that Mullen sent to National Student Marketing's accountants was a letter he had no authority to send.

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Mullen at the end of that year, at the end of 1969, formed his own company. In January of 1970 Kelly again came to Randell and said, Mullen hasn't been able to sell the stock that you gave him. Will you cash it in for him? Will you buy it from him?

Randell, again being a man who remembers favors, said, sure, but I cannot give him the full value of it now. I can only give him $25,000 now.

So Mullen came to Randell's office and Randell gave him a check for $25,000 and Mullen told Randell he would give him back the stock certificate when Randell finished paying for it.

Mullen, however, even then knew that he had to cover his tracks, knew that he had to cover this payment, knew that he had to hide this bribe.

So he told Randell when he filled out the check not to make it out to Thomas Mullen, make it out to Back Bay Properties, Inc.

Back Bay Properties, Inc., a phony company that had no assets and did no business that Mullen had set up. That very day Mullen went to the bank, opened up an account for Back Bay Properties, Inc., deposited the check in there and within days withdrew the bulk of the $25,000 and put it in his own personal checking

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account and then into his pocket.

In this way Mullen hoped to cover up this bribe. To make it seem like it was an investment rather than what it really was, a payoff or a bribe that Randell had passed him.

Mullen's plans to cash in the remainder of the stock ended because shortly thereafter the value of the stock began to plummet and the United States Securities and Exchange Commission began an investigation of the affairs of National Student Marketing Corporation, but Mullen's covering up of this bribe didn't end there.

In November of 1970 Mullen was called to testify before the Securities and Exchange Commission. The day before he testified he went to Randell's office and returned to him the stock that Randell had given him more than a year before, stock that was now worth a fraction of what it had been worth when Randell had given it to him.

Mullen didn't stop covering his tracks even there. About three years later he was called to testify before a federal grand jury and there he was asked, did you ever receive anything of value from Cortes Randell and Mullen denied it even though he had received this stock worth at the time thousands of dollars and even though he

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had received a $25,000 check from Cortes Randell.

I told you this was a sophisticated plan by sophisticated men and indeed it was. When you look at the evidence when we present it to you and when you look at it with your common sense you will really see this is basically a very simple case. It is simply a case of a man, Cortes Randell, who passed a bribe to another man, Thomas Mullen, so that Mullen would use his influence and his position at Eastern Airlines favorably for National Student Marketing Corporation.

I urge you as you sit here as jurors on this case, as you consider the evidence, use your common sense.

TESTIMONY OF CORTES W. RANDELL

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CORTES W. RANDELL, called as a witness by the Government, being first duly sworn, testified as follows:

MR. VIZCARRONDO: May I inquire?

THE COURT: You may examine, Mr. Vizcarrondo.

DIRECT EXAMINATION

BY MR. VIZCARRONDO:

Q Mr. Randell, this is a large courtroom and voices don't carry particularly well here so can you try to remember to keep your voice up so that the last juror in the jury box can hear you.

A I will try, yes.

Q Mr. Randell, are you familiar with a company named National Student Marketing Corporation?

A Yes, I am.

Q Were you ever associated with it?

A Yes. I was its president and director from about 1964 through 1970.

* * * *

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Q I show you what has been marked Government Exhibit 1 for identification.

Can you identify that?

A Yes. This is our proxy statement which we issued in 1969.

Q When in 1969?

A Well, let's see, it was issued in about the first week in October, it was sent to the shareholders in

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order to try and solicit their proxies to vote for the mergers which we were then anticipating, their proxies, a statement which gives us the right to vote their shares in favor of these mergers.

Q I refer your attention to page 21 of Government Exhibit 1 for identification, which has been marked Government Exhibit 1-A for identification.

Can you identify that page?

A Yes, this is the statement of earnings for the years ended 1964 through '68 and also for the nine months of '68 and '69.

Q What is the statement of earnings for the nine months ended May 31, 1969?

A It is $702,000.

Q What did that financial statement represent?

A I don't follow your question? What did it represent, you mean what did the figure --

Q What did that statement represent, what did it purport to show?

A It purported to show the income for the first three-quarters of National Student Marketing from all sources from the companies that we had acquired, from fixed fee and per inquiry income.

Q Is that the first three-quarters of the year

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that was to end on August 31, 1969?

A That was to end on May 31, 1969.

Q What was the year to end?

A The year to end was August 31st. This 702,000 was for the May 31st period, which was the nine month period.

Q It was the first three-quarters of that year, is that correct?

A That's right.

MR. VIZCARRONDO: The government offers Exhibit 1 for identification into evidence.

MR. KILSHEIMER: No objection.

THE COURT: It will be received in evidence.

MR. KILSHEIMER: Just 1-A is being offered, your Honor.

THE COURT: That is what I understood.

(Government Exhibit 1-A received in evidence).

Q Mr. Randell, was Government Exhibit 1-A sent to the shareholders of National Student Marketing?

A Yes.

Q That is the financial statement you have described?

A Yes.

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Q Was it shown to various of the companies that you were negotiating to obtain?

A Yes.

Q When was that financial statement for the year ending May 31, 1969 finally prepared?

A It was prepared about in the middle of August.

Q Who prepared it?

A It was prepared by the auditing firm of National Student Marketing called Peat, Marwick & Mitchell. It is a large public accounting firm. Some of their personnel

flew up to New York and Tony Natelli, Joe Scansaroli and some others worked on it.

Q Mr. Randell, did there come a time prior to the final preparation of that May 31, 1969, financial statement, when you gave National Student Marketing accountants a commitment letter from Eastern Airlines or National Student Marketing gave it to Eastern?

THE COURT: Let's separate the question unless you are reframing it.

Q Did there come a time prior to when the accountants finally prepared that financial statement, which is Government Exhibit 1-A, when National Student Marketing gave to its accountants a commitment letter from Eastern Airlines?

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A Yes, they did.

THE COURT: Who gave?

THE WITNESS: Well, it was Dennis Kelly, but I was present when it was given.

THE COURT: All right.

Q Was Eastern Airlines a client of National Student Marketing Corporation?

A Yes.

Q For how long had it been a client of National

Student Marketing prior to the preparation of that statement?

A I believe it was a year and a half, maybe two years, something like that.

Q Who in National Student Marketing was primarily responsible for the Eastern Airlines account?

A I believe it was Robert Bushnell.

Q Who is Robert Bushnell?

A He was a vice-president of National Student Marketing and he handled large accounts for us.

Q Who at Eastern Airlines did National Student Marketing primarily deal with?

A Thomas Mullen.

Q Do you see Thomas Mullen in the courtroom?

A Yes, I do.

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Q Would you point him out.

A He is the center gentleman sitting at this table here.

MR. VIZCARRONDO: May the record so reflect.

THE COURT: The record will so indicate.

Q Mr. Randell, what were the circumstances that led up to National Student Marketing giving its accountants this commitment letter from Eastern Airlines?

MR. KILSHEIMER: I object to that, your Honor.

THE COURT: Sustained.

A Well, we --

THE COURT: No, you can't answer it. I have sustained an objection to the form of the question.

THE WITNESS: I am sorry.

Q Prior to the time that National Student Marketing gave this Eastern Airlines commitment letter, had National Student Marketing given another contract to its accountants for them to book?

A Yes, we did.

Q What was that contract?

A It was with Pontiac Motor Car Company, a Division of Pontiac and General Motors.

Q When had you submitted this contract to your accountants?

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A That contract was submitted in late April of 1969.

Q Was it a genuine contract?

MR. KILSHEIMER: Objection.

Q What form did you submit this contract to your accountants?

A It was a letter which had been submitted. The

problem with the letter was that it had come in --

MR. KILSHEIMER: I object to this witness going off without a question pending.

THE COURT: I don't know whether there is a question pending now or not, but he may be asked whether the contract was actually signed by any officer of Pontiac Division of General Motors.

Frame another question, please.

Q Mr. Randell, where did National Student Marketing obtain this letter from Pontiac that it gave to its accountants?

A The letter -- a letter came in from Jim Graham from Pontiac.

Q Who is Jim Graham?

A He was the vice-president of marketing of the Pontiac Motor Car Division and when the letter came in the letter said that we are considering --

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MR. KILSHEIMER: Objection.

THE COURT: I will permit him to answer. Frame another question.

Q What happened when the letter came in?

A We read the letter and the letter said that --

MR. KILSHEIMER: I object.

MR. VIZCARRONDO: It is not being offered for the truth of what it said.

THE COURT: I think the problem is there should be simple direct questions which call for simple direct answers as to permit the Court and jury to follow the testimony and so as to permit counsel to raise proper objections when necessary.

So the basic point of beginning was about this letter.

He may say what he did with respect to the letter. If he forged the letter he can tell us that.

Frame another question.

Q Mr. Randell, what did you do with this letter when it came in?

A When the letter came in, we read it and it said, we are considering --

Q What did you do with the letter when it came in after you read it?

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A We -- another sheet was typed altering one paragraph of the letter and the alteration said, instead

of we are considering doing programs, it says we are planning to do certain programs and then that paragraph was xeroxed on the main letter and the xerox letter was submitted to the accountants.

Q Who xeroxed this letter?

A Myself and Dennis Kelly helped for a short while on it.

Q Now, directing your attention to August of 1969 -- first of all, who is Dennis Kelly?

A He was the vice-president of National Student Marketing and also worked on big accounts.

Q Directing your attention to August of '69, what happened to this Pontiac commitment at that time?

A We knew from the policy of the accountants that since no activity had come in on that letter, during this time Jim Graham had said that we were going to be getting the funding for this contract.

Q Mr. Randell, what happened to the Pontiac matter?

A The accountants said that unless activity had occurred, we were going to have to write that contract off and so we were aware that as of the May 31st figures, we were going to have to write that off.

Q Did your accountants tell you they were going to disallow this Pontiac contract?

THE COURT: Who told him, not his accountants?

A Tony Natelli. He was the partner in charge.

Q When did he do that?

A I then asked the account executives if any of them knew of other contracts which were pending which we could put on our books and Dennis Kelly said that --

MR. KILSHEIMER: I object to what Dennis Kelly said.

MR. VIZCARRONDO: Your Honor, this is a conversation between co-conspirators.

THE COURT: We don't know if it is or not yet. I will take it subject to connection. I will reserve your motion to strike it out.

A Well, I am not sure how to answer it because the next thing that happened --

Q What did Dennis Kelly say to you?

A He said he had been workingon a contract with Eastern for a number of months and he felt as thought it was at the point that he could get a commitment letter on that. He didn't know, but he would see if he could.

THE COURT: Before I will take any evidence as to conversations, I would like you to fix the time and

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place and who was present with respect to this conversation last given. The time and place and who was there.

MR. VIZCARRONDO: Surely, your Honor.

Q When did this conversation take place?

A It took place around the second week of August of 1969.

Q Where did it take place?

A In my offices.

Q Who was present?

A Well, I don't remember anyone else being present other than Dennis Kelly.

Q Did Kelly say anything else to you?

A Yes, he said that Bob had been working with Tom for a number of months.

Q Bob who?

A Bob Bushnell.

Q And Tom who?

A Tom Mullen and at that time, as I recollect, Eastern was our biggest client the previous year and for the coming year they had been working two or three months on a large program.

THE COURT: This is what he said to you in this conversation?

THE WITNESS: No. This is just knowledge which

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I had.

THE COURT: Please listen to the question.

Q What did Kelly say to you?

A Kelly said that he would ask Tom Mullen if he could have a commitment letter.

Q Up to that time did you know of any commitment from Eastern Airlines to spend money with National Student Marketing in 1970?

A I knew that the proposal had been submitted --

Q Did you know of any commitment from them?

A Well, I knew that Mr. Mullen had approved --

THE COURT: No, I would like you to just answer the questions when you can fairly do so simply yes or no. Listen carefully to the questions and try to answer then.

If you cannot answer it that way, then you may go into an explanation.

Please frame the question again, Mr. Vizcarrondo.

Q Mr. Randell, at the time you had this conversation with Dennis Kelly or prior to that, did you know of any commitment from Eastern Airlines to spend $800,000 with National Student Marketing in 1970?

A No, other than what --

Q Did you know? Is your answer no?

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THE COURT: He can modify his answer. If the answer no is not a truthful or complete answer. Don't volunteer information.

Go ahead.

A No, other than, as I know, other than the fact that Mr. Mullen had agreed to the program, but that is all. That is all that I knew. That Mr. Mullen had agreed to go ahead with the program back in May.

Q Who told you this?

A Kelly had told me this a couple of months previously or Bob, one or the other, Bob Bushnell or Dennis Kelly.

Q Were you aware of any commitment of Eastern Airline at that time?

A No.

Q Was there anything important about the timing of this program that had been proposed to Eastern Airlines?

A Yes.

MR. KILSHEIMER: I object to this, your Honor.

THE COURT: Sustained. Strike out the answer. The jury will disregard it.

Q What happened after you had this conversation with Kelly?

A Kelly came back and said that he could get a

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commitment letter.

Q When did Kelly say this to you?

What did you have this second conversation with Kelly?

A Just the very next day so it would be, again, the second week in August.

Q Where did this conversation take place?

A In my offices.

Q Was anyone else present?

A I don't recall it, no.

Q What did Kelly say to you?

A Kelly just said that he could get a commitment letter and would do so.

Q What happened next?

A He brought one into my offices and again just within the same day or the next day.

Q Was anyone else present?

A I don't believe so, no.

Q Mr. Randell, I show you what has been marked Government Exhibit 2 for identification.

Can you identify that?

A Yes.

Q What is it?

A This was the commitment letter that Dennis Kelly

brought in.

Q When did he bring it in?

A He brought it in I believe on or about the date of the letter, August 14th.

Q He brought it into you at your office?

A Yes.

Q Did he tell you where he got this letter from?

A Yes, as I recollect he did. He said he got it from Thomas Mullen.

MR. VIZCARRONDO: The government offers Government Exhibit 2 for identification into evidence.

MR. KILSHEIMER: Your Honor, I have no objection to the contents of the letter. I do notice there is some kind of a number which apparently is not a part of the original document.

This being a xerox copy and I don't object to a xerox copy, but I don't believe the number has any relationship to this case.

MR. VIZCARRONDO: That is correct, your Honor, it doesn't.

THE COURT: Hand it to the clerk.

Is it agreeable that the jury be instructed that the number is not a part of the exhibit?

MR. KILSHEIMER: That is satisfactory to me.

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THE COURT: Members of the jury, this Exhibit 2 has been received in evidence and in the upper right-hand corner there is a number. That number apparently was not on the original letter on August 14, 1969 and you are to disregard it.

Received in evidence.

(Government Exhibit 2 received in evidence)

MR. VIZCARRONDO: May I read Government Exhibit 2 to the jury?

THE COURT: All right.

(Mr. Vizcarrondo read from Government's Exhibit 2 in evidence to the jury)

Q Mr. Randell, to your knowledge did Robert Bushnell play any part in obtaining Government Exhibit 2?

A Not to my knowledge, no, sir.

Q To your knowledge was there any kind of commitment from Thomas Mullen or Eastern Airlines, oral or written, to spend $820,000 with National Student Marketing Corporation in existence as of May 14, 1969?

A Would you rephrase the question or reword it, please, I am sorry.

Q To your knowledge was there any commitment, oral or written, from Thomas Mullen or Eastern Airlines to

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spend $820,000 with National Student Marketing Corporation in existence as of May 14, 1960?

A Not from Eastern. Tom said that he wanted to do the program, but other than he, I knew of no commitment from anybody else, no.

Q I show you what has been marked Government Exhibit 3 for identification.

Can you identify that?

A Yes. This letter was given to me --

Q By whom?

A By Dennis Kelly.

Q When?

A At the same time he gave me the commitment letter.

Q Was that in your office?

A Yes.

Q By the commitment letter you are referring to Government Exhibit 2?

A Yes.

Q What did Kelly say to you when he gave you Government Exhibit 3 for identification?

A He said that I had to sign this one in order for us to get the other commitment letter.

Q Did you do anything?

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A Yes, I signed it and gave both letters back to Dennis.

MR. VIZCARRONDO: The government offers Exhibit 3 for identification into evidence.

MR. KILSHEIMER: No objection.

THE COURT: It will be received in evidence.

(Government's Exhibit 3 received in evidence)

MR. VIZCARRONDO: May I read it to the jury, your Honor?

THE COURT: Yes.

(Mr. Vizcarrondo read from Government's Exhibit 3 in evidence to the jury)

Q Mr. Randell, what was done with Government Exhibit 2 then?

A I believe Dennis included it in a package which he gave to Tony Natelli or people at Peat, Marwick & Mitchell at the time they were preparing the May 31st figures.

Q Were you present when the package was given to Natelli?

A Yes, I was.

Q About how long after that was the May 31, 1969 financial statement finally prepared?

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A It was completed about a week later.

Q Did there come a time after that when you had a discussion with Dennis Kelly about Thomas Mullen?

A Yes.

Q About when was this?

A A few weeks later Dennis said --

Q About how many weeks, do you recall?

A Three or four weeks later.

Q Where did this conversation take place?

A In my office.

Q Was anyone else present?

A I don't recall it, no.

Q What did Kelly say to you and what did you say to him?

A Dennis said that Thomas was interested in started a sports program or sports business and would I be willing to give some shares and to help him get the thing started and I said that I would and I ordered up some shares, I don't remember the number. It was a few thousand shares, and gave them to Dennis.

Q When did you give this to Kelly?

A It was about the same time as I best recall, three or four weeks after this event so it would be roughly the middle of September is my best guess.

TESTIMONY OF JAMES V. CAMMISA, JR.

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JAMES V. CAMMISA, JR., called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VIZCARRONDO:

Q Mr. Cammisa, by whom are you employed?

A Until last Friday I was vice-president of marketing with Econo-Car International in Daytona Beach.

Q Where are you employed now?

A I'm unemployed at the present time.

Q Were you ever employed by Eastern Airlines?

A Yes, I was from November of 1967 through October of 1972.

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Q What job did you hold while you were at Eastern Airlines?

A During that five-year period I held several jobs and they included director of merchandising, director of advertising and merchandising, director of marketing, planning and advertising.

Q What were your duties?

A In the first job I was responsible for a group charged with planning marketing and merchandising programs for the airlines' different marketing segments.

Q And thereafter?

A Thereafter I took on broader responsibility in planning advertising campaigns and additional marketing programs.

Q Do you know a man named Thomas Mullen?

A Yes, I do, sir.

Q Do you see him in the courtroom today?

A Yes.

Q Point him out.

MR. VIZCARRONDO: May the record identify that the witness has identified the defendant.

THE COURT: Where is the man you are pointing to?

MR. KILSHEIMER: It is conceded.

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THE COURT: It is conceded this witness knows Mr. Mullen.

BY MR. VIZCARRONDO:

Q When did you meet Thomas Mullen?

A I met him when I was first employed at Eastern in November of 1967. He was an employee at Eastern and assigned to the group that I was to take over responsibility for.

Q While you were at Eastern was he under your supervision?

A For most of the time I was there, yes. From time to time, as I recall, he was assigned to other projects under the supervision of other people, but for the bulk of the time he was working directly under me.

Q What was Mr. Mullen's job?

A He was manager of special markets.

Q His normal duties in that position were under your supervision?

A That's correct.

Q Mr. Cammisa, while you were at Eastern, were you familiar with a company named National Student Marketing Corporation?

A Yes, sir.

Q What was National Student Marking Corporation?

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A National Student Marketing was one of the suppliers who provided promotional services to Eastern

Airlines and their specialty was marketing to the youth segment of the market.

Q Who at Eastern Airlines was primarily responsible for dealing with National Student Marketing?

A Thomas Mullen.

Q Mr. Cammisa, at about what time of the year is Eastern's budget for the coming year approved?

A It varied from year to year, but under normal circumstances it occurred in the last quarter of the year during the period October, November through as late as January of the next year.

Q When would it be finally approved?

A Normally in December.

Q While you were at Eastern, was it ever approved earlier than that?

A To the best of my recollection, no.

Q Did you have authority, without getting higher approval in the company, to commit Eastern to contracts for a year in which the budget had not been approved?

A No, sir.

Q Did Thomas Mullen?

A No, sir.

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Q I show you Government's Exhibit 2 in evidence a letter from Thomas E. Mullen, Manager of Special Markets, to Robert C. Bushnell, National Student Marketing Corporation, dated August 14, 1969.

Did you ever see that letter while you were at Eastern Airlies?

A I don't recall seeing this letter.

Q Did Thomas Mullen have authority to send that letter without getting higher approval in the company?

A No, sir.

Q Did you have authority?

A No, sir.

Q Now, would the usual practice at Eastern have been for Thomas Mullen to have sent you a copy of that letter?

A Yes, sir.

Q Was it the usual practice at Eastern Airlines that letters stated to whom copies had been sent?

A Pardon me?

Q Was it the usual practice at Eastern Airlines that letters stated at the bottom to whom copies of the letter had been sent?

A That would be correct.

Q Does that letter indicate that a copy was sent

to you?

A No copies are indicated on this letter.

Q I show you Government Exhibit 3 in evidence, a letter to Mr. Thomas E. Mullen of Eastern Airlines from Cortes Randell, President, National Student Marketing, dated August 14, 1969.

Did you ever see that letter while you were at Eastern Airlines?

A I don't recall seeing this letter.

Q Would it have been the usual practice for Thomas Mullen to have shown you a copy of that letter if he received it?

MR. KILSHEIMER: Objection.

THE COURT: Sustained.

Q Did Thomas Mullen have the authority to send Government Exhibit 2 in exchange for receiving Government Exhibit 3?

MR. KILSHEIMER: Objection.

THE COURT: He's asking him about actual authority, I assume and I will permit that if it is understood that the question is limited to actual authority and not apparent authority.

MR. KILSHEIMER: But the witness has already said that Mr. Mullen would not have authority to write

colk Cammisa - Direct

Exhibit 2.

THE COURT: Maybe he already said it. I think this question may be slightly different and I will allow it to be asked.

A Would you rephrase the question?

Q Did Thomas Mullen have authority to send Government Exhibit 2 in exchange for receiving Government Exhibit 3?

A No, sir.

Q Did you have such authority?

A No, sir.

Q Without getting higher approval in the company?

A No, sir.

Q I show you Government Exhibit 7A and 7B in evidence. Did you ever see that while you were at Eastern Airlines?

A I don't recall seeing this.

Q Did Thomas Mullen have authority to send Government Exhibit 7A and 7B without getting higher approval?

A No, sir.

Q Did you have such authority?

A No, sir.

Q Who was it who did respond to accountants' inquiries at Eastern?

THE WITNESS: I don't know who would.

* * * *

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Q Wasn't it the usual practice at Eastern to commit to an advertising budget approximately three or three-and-a-half percent of the revenue generated by each market.

A That would be a normal figure, two or three percent.

Q So that if the youth market contributed $25,000,000 worth of fares to Eastern's revenues, a seven or eight hundred thousand dollar advertising budget in that area was not unrealistic, was it?

A Well, all other things being equal, but there are other variables.

Q I understand, but that is in the realm of what Eastern would have committed to that type of advertising budget?

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A It's within the realm of possibility, yes.

Q At the time you came to Eastern, Tom Mullen had been there considerably before you, had he not?

A That's correct, sir.

Q He was there something like 15 or 16 years?

A I don't know exactly how long, but a considerable period of time.

Q He had worked fairly independently in the areas that were assigned to him, did he not?

A What particular areas?

Q Take sports, the golf program of Eastern, did not Tom Mullen work fairly independently in that area?

A That's correct.

Q And he made commitments of substantial sums of money on behalf of Eastern for the golf program, did he not?

A Is this prior to my being there or after?

Q While you were there.

A The golf program, that's correct.

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Q Mr. Cammisa, Government's Exhibit 2 is dated August 14, 1969. Now, that was approximately six months before the budget for 1970 would have been approved; is that correct?

A That's correct.

Q It states in the first paragraph, "This is to

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confirm our verbal commitment given to you on May 14, 1969. You will accept and utilize during the fiscal year of 1970

an amount of not less than $220,000 for National Student Marketing Services."

Now, while you were at Eastern did you ever see anyone else ever send out a letter six months before the final budget was approved commiting Eastern to an expenditure of $800,000 for the coming year?

MR. KILSHEIMER: Objection.

THE COURT: I will allow that question.

A A commitment this far in advance would be unusual unless there were other circumstances associated with it.

Q Would those circumstances have entailed getting the approval of those in higher authority in the company than Mr. Mullen had?

A Would you repeat that again?

Q And would those circumstances have included getting approval from persons higher up in the company with higher authority than Mr. Mullen had?

A It would have included that.

Q While you were at Eastern, you never saw any other letter like that?

MR. KILSHEIMER: Objection.

THE COURT: I already sustained the objection to

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that broad a question, but I think the witness has testified.

Does the same thing apply to an oral commitment?

THE WITNESS: I don't understand, your Honor.

THE COURT: Did yourself or persons working for you or under your supervision have the power to make an oral commitment to a supplier of services?

THE WITNESS: It depended on the magnitude and the timing, but verbal commitments could be made.

Q Would Thomas Mullen have had authority to make a verbal commitment for $800,000 six months before the budget was approved without getting higher authority?

A That seems like a substantial amount of money and a long period of time.

Q What is the answer?

A No.

TESTIMONY OF MAURICE KELLEY

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Q Mr. Kelley, did you have authority, without getting prior approval of the company, to commit Eastern Airlines to contracts for a year for which the budget had not yet been approved?

A No.

Q Did Thomas Mullen?

A No.

THE COURT: To whom did you report, Mr. Kelley?

THE WITNESS: I reported to the vice-president of marketing, Thomas McFadden.

THE COURT: To whom did he report, if you know?

THE WITNESS: He reported to the president.

THE COURT: Who was the president at that time?

THE WITNESS: Arthur Lewis, I believe. Mr. Lewis left sometime in that time frame, I'm not sure when.

BY MR. VIZCARRONDO:

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Q I show you Government Exhibit 2. Can you identify it? Excuse me, did you ever see that when you were at

Eastern Airlines?

A Not that I recall.

Q Did Thomas Mullen have authority to send Government Exhibit 2 without getting higher approval in the company?

A No.

Q Was it the practice at Eastern Airlies for letters to state to whom copies of the letter had been sent?

A Yes.

Q Does that letter indicate whether or not a copy was sent to you?

A There are no copies shown.

Q Would it have been the usual practice at Eastern Airlies for Thomas Mullen to have sent you a copy of that letter?

MR. KILSHEIMER: Objection.

THE COURT: Is the objection to the form of the question?

MR. KILSHEIMER: Yes, sir.

THE COURT: All right, sustained as to form.

BY MR. VIZCARRONDO:

Q Was there a usual practice at Eastern Airlies

in 1969 for sending copies of letters to companies that Eastern dealt with to other people in the comp ny?

MR. KILSHEIMER: Objection.

THE COURT: He may answer that if there was a policy.

A Well, I would have to say that since I was new and Mr. McFadden was new there may have been an evolution of policy, but business practice that we tried to abide by included copies of correspondence, yes.

Q Would that practice -- would that usual practice have included Mr. Mullen sending you a copy of that letter?

A Yes.

Q I show you what has been marked Government Exhibit 3 in evidence.

Did you ever see that when you were at Eastern?

A Not that I recall.

Q Did Thomas Mullen have the authority to send Government Exhibit 2 in exchange for receiving Government Exhibit 3?

A No.

Q I show you Government Exhibit 7A and 7B in evidence. Will you look at them, please.

Did Thomas Mullen have the authority to send Government Exhibits 7A and 7B without getting higher approval

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in the company?

A Not at this point in time.

Q Which was October of 1969?

A Right.

Q Did you have such authority?

A No.

Q Would you have had to get higher approval?

A Yes.

Q I don't believe I asked you this. If I did, excuse me for repeating myself.

Did you ever see Government's Exhibit 7A and 7B while you were at Eastern?

A Not that I recall, no.

SOUTH MARKET

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GOVERNMENT'S EXHIBIT 3
(United States v. Mullen, 74 Cr. 1172)

EASTERN SIDE LETTER

August 14, 1969

Mr. Thomas E. Mullen
Eastern Airlines
10 Rockefeller Plaza
New York, N. Y. 10020

11190

Dear Mr. Mullen:

This will confirm that as usual with media contracts, your commitment to us dated August 1969 would be cancellable upon delivery of thirty (30) days notice in writing not later than December 31, 1969.

Very truly yours,

NATIONAL STUDENT MARKETING

Cortes W. Randell
President

CWR:kmm

Randell Exh 9
ID - 3-24-9

PROCEEDINGS IN UNITED STATES v. MULLEN,
No. 75, Cr. 179

INDICTMENT, UNITED STATES V. MULLEN
No. 75 Cr. 179 (S.D.N.Y., filed 2/21/75)
(From Transcript of Charge of the Court)

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The indictment reads as follows:

"The grand jury charges:

"1. On or about December 10, 1973 in the Southern District of New York, Thomas E. Mullen, the defendant, having taken an oath that he would testify truthfully before a grand jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York and inquiring for that district, unlawfully, wilfully and

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knowingly and contrary to his oath did make false material declarations to that grand jury.

"2. At that time and place the grand jury was conducting an investigation into possible violations of United States laws including among others laws prohibiting conspiracy to commit any offense against the United States, Title 18 United States Code Section 371, fraud in the interstate offer and sale of securities,

Title 15, United States Code Section 77-Q(a), use of manipulative and deceptive devices in the purchase and sale of securities, Title 15 United States Code Section 78-J(b) and Rule 10(b)(5) thereunder, making of false and misleading statements of material facts in statements required to be filed with the Securities and Exchange Commission, Title 15 United States Code Section 78-FF and mail fraud, Title 18 United States Code Section 1341, to determine whether any persons violated these and related statutes in connection with purchases and sales of NSMC stock.

"3. It was material to that inquiry to determine whether Mullen had been bribed or otherwise corruptly rewarded in relation to services he had performed both in his own right and in his capacity as an executive of Eastern Airlines on behalf of NSMC and its executives.

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"4. At the time and place aforesaid, Thomas E. Mullen, the defendant, appearing as a witness before the grand jury, testified falsely under oath with respect to the aforesaid material matters as follows:" And then the indictment says "false answers underscored".

"Q Very well, Mr. Mullen. Did you receive anything

of value from National Student Marketing Corporation?"

"A" --underscored-- "No, I did not.

"Q Did you ever receive anything of value from anybody whom you knew to be connected with National Student Marketing Corporation?

"A Yes, I have and I believe it was more in terms of a personal gift than it was because it was not on behalf of National Student.

Bob Bushnell gave me a turntable for a stereo set that I was making and I believe that that was in the fall of 1968. I am not positive on the date of that, but he did give me a turntable to add to one that I was building in my house. We happened --

"Q That was in the fall of '68?

"A I believe it was, yes.

"Q Did you ever receive anything else of value from anybody you knew to be connected with National Student Marketing Corporation?"

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"A" --underscored-- "No, I didn't.

"Q Specifically, did you receive anything of value through Mr. Dennis Kelly?

"A" --underscored-- "No, I didn't.

"Q Did you receive anything of value through or from Mr. Bushnell?

"A No, I didn't.

"Q With the exception of the turntable?

"A Other than what I just said.

"Q How about fromMr. Cortes Randell?

"A" --underscored-- "No, I did not.

"Q What was the approximate value of the turntable that you received?

"A About $60.

Q And is it your sworn testimony that aside from that $60 turntable you never received anything of value either as a gift or in any other form from anyone you knew to be connected with National Student Marketing Corporation?

"A" --underscored-- "That's correct."

"5. This testimony of Mullen, as he then and there well knew, was untrue in that Mullen in or around September 1969 had received from Randell through Kelly a certificate for several thousand shares

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of NSMC stock and had further received from Randell on or about January 13, 1970 a check for $25,000."

EXCERPTS FROM TRIAL TESTIMONY

Government's Opening Statement

[Page 2]

(Jury enter courtroom.)

THE COURT: Good afternoon, members of the jury. Mr. Vizcarrondo, you may make an opening statement on behalf of the government.

MR. VIZCARRONDO: Thank you, your Honor. May it please the court, Mr. Kilsheimer and ladies and gentlemen of the jury, this is a case about false statements, false statements made by the defendant, Thomas Mullen, to a federal grand jury.

A federal grand jury was investigating fraud and swindle in the activities of a company called National Student Marketing Corporation. Thomas Mullen was called before that grand jury, and asked about his knowledge of its affairs and about his involvement in its affairs. He took an oath and swore to tell the truth to the grand jury.

He was asked certain questions. He violated that oath because the answers that he gave were not true. He gave false answers because he knew that the true answer would implicate himself in the affairs in the swindle on behalf of Student Marketing.

He gave false answers because he knew he answered improperly in his job at Eastern Air Lines. He gave false answers because he knew that he had done wrong, and he wanted to cover it up. He gave false answers because he had taken

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a payoff from the president of National Student Marketing while he was at Eastern Air Lines, and wanted to cover his tracks.

Now, I am Paul Vizcarrondo. I am an Assistant United States Attorney in this district. I will prosecute this case. I use the word "prosecute" because this is a criminal case. It is a very serious matter. It is a matter that you took your oath as jurors and swore to try truly and fairly on the basis of the evidence that is presented to you.

Now, what I said to you in my opening statement is not evidence. What the defendant's lawyer says to you in his opening statement is not evidence. The only evidence that you are to consider in this case is the testimony of the witnesses from that witness stand, and the documents and the exhibits that are admitted into evidence. Listen to the evidence carefully. It is your duty to try this case and consider it.

What I can do in the opening statement is to provide you with a kind of outline or road map of the

evidence and put in the pieces. You can put the pieces together when the evidence comes in.

National Student Marketing is a company that sold its own product and the products of other companies to what

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is called the youth market, college and high school students. It was started by a man named Cortes Randell who later became the president. He began selling his stock to the public in the spring of 1968 and reported profits as the price of the stock became very attractive and it rose.

One of National Student Marketing's clients, one of the companies which it sold products or services to, the so-called youth market, was Eastern Air Lines. The man at Eastern Air Lines that National Student Marketing dealt with was Thomas Mullen.

In August of 1969 in National Student Marketing's accountants preparing the financial statement for the three quarters of the National Student Marketing financial year, and National Student Marketing is not on a calendar year like most of us, January through December. It was a fiscal year that began on September 1st of every year and ended August 31st of every year, and that was when it issued financial statements.

It issued the statements saying what the financial condition was. It issued it on the basis of August 31st of each year.

Now, in August of 1969 National Student Marketing's accountants, as I have just told you, were preparing a financial statement that showed the financial condition of

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National Student Marketing, its earnings and income at three quarters of the year, or as of May 31st, 1969 for the year that was supposed to end August 31st, 1969.

Now, the officers of National Student Marketing thought that the profits that were going to be shown on that financial statement would be about$700,000, that the company had earned $700,000 in the first nine months of the year.

This financial statement was going to be a document that was going to be shown to National Student Marketing's shareholders when the officers of the company asked National Student Marketing's shareholders for their votes for certain actions. This statement was going to be shown to various companies that National Student Marketing's officers were in the process of trying to buy for National Student Marketing at the time. The way they bought most of the companies was by paying owners with shares of National Student Marketing, with the shares of stock. National Student Marketing was showing these financial statements to the purchasers for negotiation. In addition, this financial statement was going to be issued and seen by the public, and it was supposed to depict how well or poorly the company had done in the first nine months of the year.

But just before the statement was finally prepared, National Student Marketing's accountants informed

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Cortes Randell, the president of the company, that they would have to disallow a large chunk of the income of the earnings of the profits that National Student Marketing was planning to show, or had been planning to show on this financial statement.

Now, this income, these earnings came from a supposed contract that National Student Marketing, or I will call it NSMC, was planning or had told its accountants that it had with the Pontiac Motor Company. This so-called contract was, in fact, a phoney since the letter that Randell and another officer of NSMC had shown to counsel and was supposed to be the contract with Pontiac, was, in fact, a forgery, and a letter that Randell had typed himself and had superimposed over another letter which had the signature of the Pontiac official on it.

But, in any event, in August of 1969 NSMC's accountants would not send that. They told him that it was in the contract, and they told NSMC that they were disallowing the large chunk of the earnings. Randell was desperate for finding replacement of the earnings. He went to Dennis Kelly who was vice president, and told him about the problem. Shortly thereafter he came back with a letter from Eastern

Air Lines signed by Thomas Mullen stating that Eastern Air Lines on May 14, 1969 had been committed to do $820,000 worth of business with NSMC.

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Now, this contract filled the gap in two ways. Although it was dated August 14, 1969, it stated that Eastern and National Student Marketing had an oral contract as of May 14, 1969, which was within the nine-month period that the auditor was making the financial statement for. That financial period was the work period that ended May 31, 1969. So it plugged the hole in that respect.

It also plugged the hole, because it was the right amount, and it was the amount large enough for National Student Marketing to show a profit, to show earnings on its books for that period, and replace the phony Pontiac contract that had been disallowed.

So Cortes Randell took this letter to National Student Marketing's accountants, gave it to them, it was accepted, and when the financial statement was issued later that month, National Student Marketing recorded earnings of $700,000, and it showed these earnings to the shareholders, to the people who it was negotiating with, the companies, and to the public.

A short time later, Randell paid back Mullen this big favor by giving him, through Dennis Kelly, who was

the go-between, several thousand shares of National Student Marketing stock, which were then worth on the open market hundreds of thousands of dollars.

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2 wcsr

Thomas Mullen's favor to National Student Marketing did not end there. After this stock had been given to him by Randell, National Student Marketing's accountants sent a letter to Mullen at Eastern Air Lines, and the letter stated that the accountants were doing an audit now for the end of the year, for the year that had ended on August 31, 1969, and they wanted to confirm with Eastern that they were in fact committed to do $834,000 worth of business with NSMC in 1970. Tom Mullen signed this letter and sent it off, and the earnings were reported on the August 31, 1969 financial statement.

Mullen left Eastern Air Lines at the end of 1969, at the end of December. He went off and looked to his own affairs, started his own company. In January 1970, in the middle of January 1970, Mullen went back to Randell and asked him to cash in this stock certificate that Randell had given him several months before. Randell said, "Well, you know, I would like to help you out and I will, but I can't give you the full value of this stock, I just don't have the money now, but I will give you $25,000 for it right now."

Mullen said, "Fine, I'll give you back the stock

certificate when you finish paying me for it. But when you write this check, don't make it out to me; make it out to Back Bay Properties, Inc."

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3 wesr

Now, you will hear that Back Bay Properties, Inc., was a phony company, a company that Mullen had just set up a few days or weeks before, a company which never did any business.

After Randell gave Mullen this check, Mullen that very day went to the bank, the Irving Trust Company, and that very day opened a bank account for Back Bay Properties, not even Back Bay Properties, Inc., and that very day deposited the $25,000 check in there.

Within several days thereafter, Mullen withdrew practically all the money from that bank account, deposited it in his own personal checking account, and then into his own pocket.

As early as that, as early as 1969 and 1970, Tom Mullen was covering his tracks. But he did not stop covering his tracks there.

Shortly after he got the check from Randell, the United States Securities and Exchange Commission began an investigation into the affairs of National Student Marketing Corporation. The stock dropped. Randell was forced

to leave the company.

In October or November of 1970 Mullen was called to testify before the SEC. After he had been subpoenaed to testify and the day before he was scheduled to testify,

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Mullen went back to Randell and gave him back the stock certificate that was now worth a fraction of what it had been worth when Randell had originally given it to Mullen. And he gave it back to Randell.

But his covering of his tracks did not end there. Because about three years after that, he was called before the Federal Grand Jury which I have already told you about that was investigating the shenanigans, that was investigating the fraud, the swindle, of National Student Marketing. And he was asked questions about his knowledge and about his involvement with National Student Marketing -- questions that were important to the Grand Jury, that were material to their inquiry into the phony and the fraudulent activities of National Student Marketing. And they asked him if he had ever received anything of value from Cortes Randell or anyone else associated with National Student Marketing. Thomas Mullen said no -- even though he had been given a stock certificate that at the time had been worth thousands of dollars, and even though Randell had given him a check for $25,000, which Mullen had quickly cashed.

Now, this is a pretty simple case. The evidence should not take very long. The case should be, I would guess, over in a few days. But because it is a simple case you should not think that it is not an important case,

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because it is an important case. It is an important case to the defendant who stands accused of a crime. It is an important case to the Government, because I think you can understand that a case such as this, where a man is accused of going before a Grand Jury and giving false answers to that Grand Jury when it is investigating a fraud and a swindle of the magnitude of the National Student Marketing case, is important to the Government.

And it is a case also which I think you can look at and consider with your common sense.

When you come in here as jurors, you may take off your coats but you don't take off your common sense. Your common sense is the most valuable tool that you have sitting as jurors. Because it is not a complicated case It's not a case involving convoluted transactions or all kinds o difficult courses to follow. It is a simple case of a man who went before a Grand Jury and was asked simple questions and gave false answers.

So I urge you, when you look at the evidence, as you sit here as jurors on the case, use your common sense.

I urge you, and I am sure the defendant urges you, to listen to the evidence carefully, consider it carefully, use your common sense as you listen to it, so that at the end of the case, when all the evidence is before you, you can fulfill

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your solemn oath as jurors and return with a fair and a just verdict. Thank you.

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CORTES W. RANDELL, called as a witness by the Government, being first duly sworn, testified as follows:

MR. VIZCARRONDO: May I inquire?

THE COURT: Yes, you may examine.

DIRECT EXAMINATION

BY MR. VIZCARRONDO:

* * * *

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Q I show you what has been marked as Exhibit 1, for identification. Can you identify that?

A Yes. This was our earnings statement as of nine months, the end of May, May 31, 1969, compared to 1968, plus it had the year end numbers for the preceding five years.

Q What did that earnings statement for the period ending May 31, 1969 represent?

A It represented all of our income for the first three quarters or the first nine months.

See, the first nine months ended May 31, and we

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had one more quarter to go to August.

Q What earnings did it report?

A $702,000.

MR. VIZCARRONDO: The government offers Exhibit 1 for identification into evidence.

MR. KILSHEIMER: I object on the grounds of relevance to the issues in this case.

THE COURT: Could you proceed, and I will hear you later on that issue?

If that is not convenient, then I will have a brief recess, and discuss it now.

MR. VIZCARRONDO: I believe that will be fine.

THE COURT: I will reserve decision on that. When we come to a convenient point, I will excuse the jury and discuss it.

BY MR. VIZCARRONDO:

Q Was this May 31, 1969 financial statement shown to [redacted]tional Student Marketing shareholders?

A Yes, it was.

Q Was it shown to certain companies that National Student Marketing was in the process of negotiating to buy?

A Yes, it was.

Q Were those companies that were included in this 1969 77 cents per share, that you mention, reported on

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August 31, as of August 31?

A Yes. I believe so. I believe they were shown.

Q At about what time was that financial statement for the period ending May 31, 1969 filed and prepared?

A It was prepared in the middle of August.

Q Of 1969?

A Yes. Um hum.

Q Who prepared it.

A The certified public accounting firm of Peat, Marwick and Mitchell. They were the company's auditors at the time.

They are a large accounting firm, and the partner in charge was Tony Natelli. He had a couple of people working for him.

Q Did there come a time prior to the preparation of that financial statement that the National Student Marketing Corporation gave its accountants a commitment letter for Eastern Air Lines?

A Yes.

Q Was Eastern Air Lines a client of National Student Marketing?

A Yes, they were.

Q About how long had they been a client of National Student Marketing?

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A They had been a client for a year and a half or two years. In that time frame, I believe.

Q Who at National Student Marketing was responsible for the Eastern Air Lines account?

A Thomas Mullen.

Q Who at National Student Marketing?

A National Student Marketing, Bob Bushnell had primary responsibility for it.

Q Who at Eastern Air Lines did he deal with primarily

A Thomas Mullen.

Q Do you see Thomas Mullen in the courtroom today?

A Yes, I do.

Q Will you point him out?

MR. KILSHEIMER: I will concede that this witness knows my client.

THE COURT: It is conceded for the record that this witness is acquainted with Mr. Mullen and could identify him.

Q Prior to your giving your accountant this commitment letter from Eastern Air Lines, had the accountant disallowed another contract previously given to them?

A Yes.

Q Who was that contract with?

A Pontiac Motor Company of Pontiac, Michigan.

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Q In what form did you submit this contract to your accountants?

A A commitment letter from the director of marketing.

Q Was this commitment letter from Pontiac changed?

A Part of it was, yes.

Q Can you explain to the jury what part of it was?

A When we received the letter, the letter said, "We are considering implementing market programs," and there was a paragraph in it which was changed to read instead of "We are considering implementing", it was changed to read, "We plan to implement." That was the change.

Q Who changed it?

A Myself and another officer of National Student Marketing.

Q Who was that other officer?

A Dennis Kelly.

Q Who is Dennis Kelly?

A He was a vice president, and he was in the marketing section. His responsibility was major clients.

Q How did you make the change on this letter?

A On the Xerox machine.

Q What did you do?

A The change was retyped, and it was laid over the original letter and Xeroxed.

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Q Who submitted this letter to your accountant as a contract with Pontiac?

A Yes, or as a commitment letter with Pontiac, yes.

Q About when did you do this?

A In April of 1969.

Q When did your accountants tell you that they were going to disallow this contract?

A Early in August of 1969.

Q Did they tell you why?

A Yes. There had been no activity on it, and we understood from Jim Bramner that the commitment letter -- that the contract and all the other paper coming in, and it never came in.

Q Did the accountant tell you why they disallowed it?

A Nothing came in and there was no activity on it.

Q It was not a firm enough contract for them to book?

A That's right.

Q What did you do after that?

A I asked the account executives if they had any other contracts which were pending, and we could get a commitment form.

One of the people I asked was Dennis Kelly. He

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said, "Yes."

Q Mr. Randell, without saying what Dennis Kelly said to you, did Dennis Kelly thereafter bring you anything?

A Yes. He brought me a commitment letter from, Eastern and he said it was signed by Mr. Mullen.

Q Mr. Randell, I show you whathas been marked Government's Exhibit 2 for identification. Can you identify it?

A Yes. This is a copy of the commitment letter which Dennis brought from Thomas Mullen, he said.

THE COURT: I will strike out any reference to what he said if there is a hearsay objection.

MR. KILSHEIMER: No objection.

THE COURT: The witness may testify to the fact that he received that paper from Mr. Bushnell at about that time.

Members of the jury may disregard the hearsay.

MR. VIZCARRONDO: The government offers Exhibit 2 for identification into evidence.

MR. KILSHEIMER: No objection.

THE COURT: Received in evidence.

(Government's Exhibit 2 in evidence.)

MR. VIZCARRONDO: May I read it to the jury, your Honor?

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THE COURT: Yes.

(Government's Exhibit 2 read to the jury.)

BY MR. VIZCARRONDO:

Q Mr. Randell, so far as you know did Robert Bushnell have anything to do with obtaining this letter?

A Not to my knowledge, no.

Q Prior to your receipt of this letter, Government's Exhibit 2, did you know of any commitment from Eastern Air Lines to spend this amount of money in May of 1970?

A No.

THE COURT: Does the record show who gave him that paper?

MR. VIZCARRONDO: Yes. He testified that Dennis Kelly did.

Q Did you know of any commitment from Eastern Air Lines to spend that amount of money as of May 14, 1969?

A None other than from Mr. --

Q Well, do you know of any commitments?

A Mr. Mullen -- he said he was in favor of the program.

Q Did you know of any commitment from Eastern Air Lines?

A No.

Q Did you ever have any conversation with Thomas

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Mullen about this?

A I don't recall any, no.

Q I show you what has been marked Government's Exhibit 3, for identification, and can you identify it?

A Yes. This is a letter which was given to me, as I recall, at the same time the first letter was given to me, Exhibit 2.

Q Who gave it to you?

A Dennis Kelly.

Q Where did he give it to you?

A In my office.

Q What day was this?

A I think it was on the day that it is dated.

Q Was that August 14, 1969?

A Yes.

Q What did you do with the letter when it was given to you?

A I signed it.

Q What did you do with it then?

A Gave it back to Dennis.

Q Had you seen this letter at any time prior to that?

A No.

Q Were you aware of its contents prior to that?

A No.

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MR. VIZCARRONDO: The government offers Exhibit 3 for identification into evidence.

MR. KILSHEIMER: No objection.

THE COURT: It will be received in evidence.

(Government's Exhibit 3 received in evidence.)

MR. VIZCARRONDO: May I read Exhibit 3 to the jury, your Honor?

THE COURT: Yes.

(Government Exhibit 3 read to the jury.)

BY MR. VIZCARRONDO:

Q Mr. Randell, what, to your knowledge, was done with Government's Exhibit 2, the letter from Mr. Mullen?

A I believe it was given to the accountants.

Q By whom?

A By Dennis Kelly.

Q In your presence?

A Yes.

Q About when was this?

A A day or two later, the 15th or 16th, I think, of August.

Q About how long after the accountants were given Government's Exhibit 2 was the May 31, 1969 financial statement prepared?

A I think it was about a week later. Within a week,

I think.

Q Did there come a time thereafter when you gave shares of stock to Dennis Kelly?

A Yes.

Q About when was that?

A About a month later, as best I recall.

Q Where were you when you gave these shares of stock to Dennis Kelly?

A In my office.

Q About how many shares of stock was it?

A I don't remember frankly, but I think it was several thousand shares.

Somewhere from two to 5,000 shares. That's my best recollection.

Q A single certificate of stock from two to 5,000 shares?

A Yes.

Q Did you do anything with that certificate before you gave it to Mr. Kelly?

A Yes. I endorsed it in blank on the back.

Q Did you sign your name on the back?

A Yes.

TESTIMONY OF JAMES V. CAMMISA, JR.

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Q About what time of each year was Eastern's budget for the coming year approved?

A Normally in the latter part of the year, November or December or sometimes spilled over into January of the new year.

Q Did you have authority, without getting higher approval, to commit Eastern Airlines to contracts for a year for which the budget had not yet been approved?

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A No, not without higher authority.

Q Did Thomas Mullen?

A No, sir.

Q I show you Government's Exhibit 2. Did you ever see that while you were at Eastern?

A I don't recall seeing this.

Q Did Thomas Mullen have authority to send Government's Exhibit 2 on August of 1969 without getting higher approval in the company?

A No, sir.

Q Did you?

A No, sir.

Q Was there a usualy practice at Eastern in regard to sending and receiving correspondence?

A Nothing that I can recall being written.

Q Well, was there a usual practice, written or unwritten?

A Yes.

Q Do you know what that was?

A Well, it would be --

Q Well, do you know what it was?

A Well, in terms of commitments to send carbons to people, and things of that sort.

Q Would it be part of the usual practice for

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Thomas Mullen to have shown you a copy of Government's Exhibit 2?

MR. KILSHEIMER: Objection.

(Question reread.)

THE COURT: Shown to him?

MR. VIZCARRONDO: When he sent it.

THE COURT: I'll allow him to answer.

A Yes.

Q Now, was it also part of that usual practice at Eastern for letters from Eastern to indicate on them what other persons had been sent copies of the letter when other persons had been sent copies of the letters?

A Yes, sir.

Q And does Government's Exhibit 2 indicate whether or not a copy was sent to you?

A No carbons are indicated on it.

Q I show you Government's Exhibit 3 which is a letter from Cortes Randell to Thomas Mullen. Did you ever see that while you were at Eastern?

A I don't recall seeing this.

Q Did Thomas Mullen have authority to send Government's Exhibit 2 in exchange for receiving Government's Exhibit 3?

A No, sir.

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blk Caimissa - Direct

Q Was it part of the usual practice at Eastern for Mullen to have given you a copy of Government's Exhibit 3 when he received it?

A It would have been.

Q I show you Government's Exhibit 7-A and 7-B in evidence, a confirmation letter to Peat, Marwick & Mitchell

signed by Thomas Mullen. Did you ever see that while you were at Eastern?

A I don't recall seeing that.

Q Did Thomas Mullen have the authority to send Government's Exhibit 7-A and 7-B without getting higher approval in the company?

A No, sir.

Q Would it have been part of the usual practice at Eastern for Mullen to have shown you a copy of 7-A and 7-B at the time that he sent it?

A Yes.

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Q When did you first meet h'm?

A Mr. Mullen was employed at Eastern when I joined them in 1968.

Q What job did he hold there?

A Manager of special markets in the advertising department.

Q Was he under your supervision at Eastern?

A Yes, he was.

Q Under your direct supervision?

A No, he was not. There was a director in-between, James Calmissa.

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blk Kelley - Direct

Q While you were at Eastern, were you familiar with a company named National Student Marketing Corporation?

A Yes, I was.

Q What was National Student Marketing?

A It was a company that specialized in marketing to the youth market.

Q Who at Eastern was responsible for dealing with National Student Marketing?

A Mr. Mullen had the primary responsiblity.

Q About what time of the year was Eastern's budget for the coming year approved?

A The financial approval usually occurred either very late in the year or January of the actual year.

Q Did you have authority without getting higher approval to commit Eastern to contracts for a year for which the budget had not yet been approved?

A No, I didn't.

Q Did Thomas Mullen?

A No.

Q I show you Government's Exhibit 2, a letter of August 14, 1969 from Thomas Mullen to Robert Bushnell in National Student Marketing Corporation. Did you ever see that letter while you were at Eastern Airlines?

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A Not that I recall.

Q Did Thomas Mullen have authority to send that letter without getting higher approval?

A No, he didn't.

Q Did you have such authority?

A No, I didn't.

Q Did Eastern Airlines have a usual practice in regard to sending and receiving correspondent?

A Well, they had a usual practice but in our department one was evolving since I was new and my boss was also new.

Q You are familiar with that practice?

A Yes.

Q And would it have been part of that normal practice for Mullen to have shown you a copy of Government's Exhibit 2 when he sent it?

A He would have sent me a copy as well as Mr. Caimissa.

Q Was it also part of that practice at Eastern for letters to indicate to what other persons copies had been sent?

A Yes.

Q And does Government's Exhibit 2 state whether a copy was sent to you?

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A A distribution list is not shown.

Q I show you what has been marked Government's Exhibit 3. A letter dated August 14, 1969 from Cortes Randell to Thomas Mullen. Did you ever see that letter while you were at Eastern?

A Not that I recall.

Q Did Thomas Mullen have authority without getting higher approval in the company to send Government's Exhibit 2 in exchange for receiving Government's Exhibit 3?

A No.

Q Did you have such authority?

A No.

Q I show you Government's Exhibit 7-A and 7-B which is a confirmation letter to Peat, Marwick & Mitchell signed by Thomas E. Mullen. Did you see that while you were at EasternAirlines?

A Not that I recall.

Q Did Thomas Mullen have authority to send Government's Exhibit 7-A and 7-B without getting higher approval in the company?

A No.

Q Did you have such authority?

A No.

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Now, I would like to say a word here about Cortes Randell who I am sure you are going to hear a lot about when the defendant's lawyer gets to talk to you.

Cortes Randell is no friend of the government. Cortes Randell was prosecuted by the government. Cortes Randell is a crook and a swindler who perpetrated a massive stock fraud, who made payoffs, bribes to people he was doing business with, who in 1970 and 1971, before he finally pled guilty was covering up his wrongdoing, was doing the same thing that Mullen was doing which Mullen is still doing.

A man who in 1970 denied ever giving any stock at all to Thomas Mullen. Just like Thomas Mullen denied it because just like Thomas Mullen, Randell knew it was improper. Randell knew it was a payoff.

Cortes Randell is no friend of the government. He testified here because he had to. He testified because he was the only person in a position to furnish the information that he was able to furnish. Again, this is where

you use your common sense.

When men make improper payments, when men make

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payoffs, when men make bribes, the men involved aren't saints, they aren't Boy Scouts. If we could, we would put a saint or a Boy Scout on the stand to testify about this payoff, but it doesn't work this way. Only crooks make payoffs, and only crooks are in the position to testify about it. So Cortes Randell was put on the stand for that purpose.

But in any event, regardless of the type of person that he is, is there any doubt about the core of his testimony? Is there any doubt about the important aspect of his testimony for the purposes of this trial.

That is that he gave Mullen stock in October of 1969, and he gave him a check for $25,000 in January of 1970? Of course there isn't. Mullen finally admitted that when he was confronted.

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MULLEN'S EXHIBIT I

EASTERN AIRLINES LETTER (12/15/69)

EASTERN

December 15, 1969

Mr. Robert C. Bushnell
National Student Marketing Corporation
345 Park Avenue 15th Floor
New York, New York

Dear Bob:

With regards to my letter to you dated August 14th in which I projected our expenditure level for 1970, we as you know are undergoing severe budget reductions; and while my estimate was based on acceptable standards with regards to projected revenues, it is now our best estimate that the expenditures in 1970 will not exceed $400,000.

If the market is responsive, as we believe it probably will be, there is a possibility that there could be adjustments in the budget; however, based on our current knowledge, the above estimate would hold true.

Best regards,

Thomas E. Mullen
Manager-Special Markets

TEM:jla

BEST COPY AVAILABLE

Chart

CLIENT	AMOUNT	MAY, 1969 REVIEW			AUGUST, 1969 REVIEW			COMFORT LETTER
		DATE	ACCOUNTANT	COMMENT	DATE	ACCOUNTANT	COMMENT	
BARNES-HIND	$22,400.00	5/22	J.S.	DELETE	8/15	D.H.O.	BAD	—
CAMPANA	21,900.00	5/22	J.S.	WRITE OFF	8/15	D.H.O.	BAD	•
FABERGE	53,775.00	5/22	J.S.	NO CONTRACT	8/15	D.H.O.	BAD	•
GOSSARD	53,775.00	5/22	J.S.	NO CONTRACT	8/15	D.H.O.	BAD	•
PACE	14,492.00	5/22	J.S.	WRITE OFF	—	—	—	•
CARNATION	11,200.00	5/22	J.S.	DELETE	—	—	—	—
BARNES-HIND	47,850.00	—	—	—	8/15	D.H.O.	BAD	•
BIZAAR	5,580.00	—	—	—	8/15	D.H.O.	BAD	•
EASTERN	27,000.00	—	—	—	8/15	D.H.O.	BAD	—
SCHICK	30,000.00	—	—	—	8/16	D.H.O.	DUPLICATED	•
TANYA	32,200.00	—	—	—	8/15	D.H.O.	BAD	—
SUB TOTAL	320,172.00							
EASTERN	519,152.00							
TOTAL	$ 839,324.00							

8/15 DHO BOOKED

Exhibit Introduced in United States v. Natelli, No. 7, Cr. 43

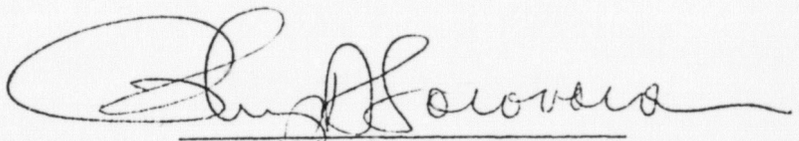
Government's Exhibit 65-15

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee v. ANTHONY M. NATELLI, Defendant-Appellant.	)	No. 76-1494

CERTIFICATE OF SERVICE

I hereby certify that I have caused two copies of the printed Brief of Defendant-Appellant, Anthony M. Natelli and 2 copies of the Joint Appendix to be hand-delivered this 9th day of February, 1977 to Jed S. Rakoff, Assistant United States Attorney, 1 St. Andrews Plaza, New York, New York 10007, attorney for appellee United States of America.



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